



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for the return of double the security deposit (the deposit).

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on June 22, 2020, the tenant sent the landlord the Notice of Direct Request Proceeding by registered mail.

The tenant provided a copy of an outgoing e-mail containing attachments of the supporting documents to confirm the Notice of Direct Request Proceeding was in fact sent by e-mail.

The Residential Tenancy Branch's Director's Order on e-mail service dated March 30, 2020 provides that a document required to be sent in accordance with sections 88 and 89 of the *Act* may be sent by e-mail if the sender and recipient e-mail addresses have been routinely used for tenancy matters.

The tenant submitted a copy of three e-mails exchanged between May 1, 2020 and May 31, 2020 showing that the landlord and tenant have used e-mail to communicate about tenancy issues.

Based on the written submissions of the tenant and in accordance with the Director's Order, I find that the landlord is deemed to have been served with the Direct Request Proceeding documents on June 25, 2020, the third day after their e-mailing.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on July 27, 2019, indicating a monthly rent of \$1,900.00 and a security deposit of \$950.00, for a tenancy commencing on September 1, 2019;
- A copy of a notice to vacate dated April 30, 2020, indicating the tenancy would end as of May 31, 2020;
- A copy of a letter from the tenant to the landlord dated April 30, 2020, providing the forwarding address and requesting the return of the deposit;
- A copy of an e-mail sent from the tenant to the landlord dated May 31, 2020, providing the forwarding address and requesting the return of the deposit;
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was sent to the landlord by text message and by placing it in the rental unit mailbox on May 31, 2020; and
- A copy of a Tenant's Monetary Order Worksheet for an Expedited Return of Security Deposit and/or Pet Damage Deposit (the Monetary Order Worksheet). showing the amount of deposit paid by the tenant, the partial amount reimbursed by the landlord, and indicating that the tenancy ended on May 31, 2020.

Analysis

In this type of matter, the tenant must prove that they served the landlord with the forwarding address in accordance with section 88 of the *Act*.

The tenant has indicated that they sent the landlord the forwarding address by text message, which is not a method of service recognized by the *Act*. There is also no evidence, such as a reply text message or acknowledgement from the landlord to show that the landlord received the forwarding address by text message, despite the method of service used.

For this reason, I cannot confirm service of the forwarding address by text message.

The tenant has also indicated that they placed a copy of the forwarding address letter in the mailbox at the rental unit. However, I find there is no signature of a witness on the Proof of Service of the Forwarding Address form to confirm this service.

For this reason, I cannot confirm service of the forwarding address by placing it in the mailbox at the rental unit.

The tenant submitted a copy of an e-mail dated May 31, 2020 providing the landlord their forwarding address.

The Residential Tenancy Branch's Director's Order on e-mail service dated March 30, 2020 provides that a document required to be sent in accordance with sections 88 and 89 of the *Act* may be sent by e-mail if the sender and recipient e-mail addresses have been routinely used for tenancy matters.

The tenant has submitted a copy of two e-mails exchanged between the landlord and the tenant on May 1, 2020 demonstrating that e-mail has been used as a method of communication.

For this reason, and in accordance with the Director's Order, I find that the landlord was deemed served with the forwarding address on June 3, 2020, three days after it was e-mailed.

Section 38(1) of the *Act* states that within fifteen days of the tenancy ending and the landlord receiving the forwarding address, the landlord may either repay the deposits or make an application for dispute resolution claiming against the deposits.

I find that the fifteenth day for the landlord to have either returned the deposits or filed for dispute resolution was June 18, 2020.

However, section 90 of the *Act* states that a document sent by regular or registered mail is deemed received on the fifth day after it was sent. If the landlord sent balance of the deposit by mail on their last day, the tenant may not have received the deposit until June 23, 2020.

I find that the tenant applied for dispute resolution on June 19, 2020, before they could have known whether the landlord complied with the provisions of section 38(1) of the *Act*, and that the earliest date the tenant could have applied for dispute resolution was June 24, 2020.

I find that the tenant made their application for dispute resolution too early.

Therefore, the tenant's application for a Monetary Order for the return of double the security deposit is dismissed with leave to reapply.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the tenant's application for a Monetary Order for the return of double the security deposit with leave to reapply.

I dismiss the tenant's application to recover the filing fee paid for this application without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 06, 2020

Residential Tenancy Branch