



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes MNSDB-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 the security deposit and the pet damage deposit (the deposits).

The tenant submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on July 16, 2020, the tenant sent each of the landlords the Notice of Direct Request Proceeding by registered mail. The tenant provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlords will be deemed to have been served with the Direct Request Proceeding documents on July 21, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security deposit and a pet damage 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 one of the landlords and the tenant on September 8, 2019, indicating a monthly rent of \$895.00, a security deposit of \$447.50, and a pet damage deposit of \$447.50, for a tenancy commencing on October 1, 2019;

- A copy of a letter from the tenant to the landlord dated June 17, 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 personally served to the landlord at 4:20 pm on June 17, 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 deposits paid by the tenant and indicating that the tenant vacated the rental unit on July 15, 2020.

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the tenant to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the tenant cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

In this type of matter, the tenant must prove that they served the landlords with the Forwarding Address in a manner that is considered necessary as per sections 71(2) (a) and 88 of the *Act*. Residential Tenancy Policy Guideline # 49 contains the details about the key elements that need to be considered when making an application for Direct Request.

Proof of service of the Forwarding Address may take the form of:

- registered mail receipt and printed tracking report;
- **a receipt signed by the landlord, stating they took hand delivery of the document(s); or**
- **a witness statement that they saw the tenant deliver the document(s).**

On the second page of the Proof of Service of the Forwarding Address there is no signature of a witness, or a signature of the person who received the forwarding address, to confirm service of the forwarding address to the landlords.

As I am not able to confirm service of the forwarding address to the landlords, which is a requirement of the Direct Request Proceeding, I find that a hearing is necessary to address this issue.

Conclusion

I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing to be conducted by an arbitrator appointed under the *Act* is required in order to determine the details of the tenant's application.

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon each of the landlords within three (3) days of receiving this decision in accordance with section 89 of the *Act*.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at <http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/information-sheets/rtb114.pdf> that explain evidence and service requirements.

For more information see our website at: gov.bc.ca/landlordtenant. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020

Victoria: 250-387-1602

Elsewhere in BC: 1-800-665-8779

This interim 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 17, 2020

Residential Tenancy Branch