



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 Tenants for a Monetary Order seeking the return of their security deposit.

The Tenants submitted a signed “Proof of Service Tenant’s Notice of Direct Request Proceeding” form which asserts the Tenants served the Landlord with the Notice of Direct Request Proceeding, along with copies of supporting documents, via registered mail on July 20, 2020.

Issues to be Decided

Are the Tenants entitled to a monetary award for the return of all or a portion of their security deposit pursuant to section 38 of the *Act*? If so, should it be doubled?

Are the Tenants entitled to recover the filing fee for this application from the landlord pursuant to section 72 of the *Act*?

Analysis

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.

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the landlord to participate, there is a much higher burden placed on the tenant in these types of proceedings than in a participatory hearing. This higher

burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the tenant must prove they served the landlord with the Notice of Direct Request Proceeding, the forwarding address, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. 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 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.

The Direct Request process is a mechanism that allows a tenant to apply for an expedited decision, and as such, the tenant must follow and submit documentation exactly as prescribed by the *Act* and “Policy Guideline #49 Tenant’s Direct Request – Deposits”. There can be no omissions or deficiencies with items being left open to interpretation or inference. In this type of matter, the tenant must prove they served the landlord with the Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act*.

Section 89 of the *Act* permits service “by sending a copy by registered mail...”; the definition of registered mail is set out in section 1 of the *Act* as “any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.” On the “Proof of Service Tenant’s Notice of Direct Request Proceeding” form, Tenant Q. S. confirms by signature that the Notice of Direct Request Proceeding and supporting documents were sent to the Landlord by registered mail. However, I find the Tenants have not provided a completed Canada Post registered mail receipt. I find the Tenants have provided a blank Canada Post Registered mail customer receipt along with a Canada Post till receipt indicating the sum paid for a “9X12 PHOTO MAILER” and a “Ltr other”. I find neither receipt identifies an address nor name for the Landlord. Because the receipt provided is incomplete, as it does not identify where or to whom the registered mail was sent, I find the Tenants have not provided sufficient supporting evidence to prove the Landlord has been served in accordance with the *Act* or the Policy Guidelines.

Further, the Tenants re-submitted their application after being notified by the Residential Tenancy Branch that both the uploaded “Forwarding address letter” and the “Proof of Service of Forwarding Address” could not be opened by the Branch; unfortunately, this

problem persists with their re-submitted application. Consequently, the Tenants have not provided a “copy of the forwarding address given to the landlord ... or a copy of the condition inspection report with the forwarding address provided” nor a “completed *Proof of Service of Forwarding Address* form” which are requirements of the Direct Request process as detailed in Policy Guideline #49. Accordingly, I find that even if the Notice of Direct Request Proceeding and supporting documents had been properly served, the Tenants have not provided sufficient documentation for the Branch to confirm they have complied with the requirements of the Direct Request Process and provided sufficient notice to the Landlord.

For these reasons, the Tenants' application for a Monetary Order for the return of the security deposit is dismissed with leave to reapply.

As the Tenants were not successful in this application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

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

I dismiss the Tenants' 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 23, 2020

Residential Tenancy Branch