



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 for the return of the security deposit (the deposit).

The tenants submitted two copies of a courier order form to confirm a package was sent to the landlords on July 17, 2020.

Issue(s) to be Decided

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

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

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.

Policy Guideline #49 on Tenant's Direct Request provides the following requirements:

"Once the package is served, the tenant must complete and submit a Proof of Service Tenant's Notice of Direct Request Proceeding (Form RTB-50) which is provided by the Branch with the Notice of Dispute Resolution Proceeding"

I note that the tenants have not provided a copy of the Proof of Service Tenant's Notice of Direct Request Proceeding forms which are a requirement of the Direct Request process as detailed in Policy Guideline #49.

Furthermore, in this type of matter, the tenants must prove they served the landlords with the Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice as per subsections 89 (1) and (2) of the *Act* which permit 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."

I find that the receipt provided by the tenants is for a package sent by courier and not for a mailing through Canada Post. As such, I find this service does not meet the definition of registered mail as defined under the *Act*.

Since I find that the tenants have not served the landlords with notice of this application in accordance with section 89 of the *Act*, I dismiss the tenants' application for a Monetary Order for the return of the security deposit 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

The tenants' application for a Monetary Order for the return of the security deposit is dismissed with leave to reapply.

The tenants' application to recover the filing fee paid for this application is dismissed 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 24, 2020

Residential Tenancy Branch