



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 seeking the return of their security deposit and pet damage deposit (collectively, the “deposits”).

Issues to be Decided

Is the Tenant 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?

Is the Tenant entitled to a monetary award for the return of all or a portion of their pet damage deposit pursuant to section 38 of the Act? If so, should it be doubled?

Is the Tenant 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*.

“Policy Guideline #49 Tenant’s Direct Request – Deposits” states:

When making a request, an applicant must provide:

- 1. A copy of the signed tenancy agreement showing the initial amount of rent, the amount of security deposit required, and if applicable, the amount of pet damage deposit required;*
- 2. If a pet damage deposit was accepted after the tenancy began, a receipt for the deposit;*
- 3. A copy of the forwarding address given to the landlord (Form RTB-47 is recommended, but not required) or a copy of the condition inspection report with the forwarding address provided;*
- 4. A completed Proof of Service of Forwarding Address (Form RTB-41);*
- 5. A Tenant’s Direct Request Worksheet (Form RTB-40); and*
- 6. The date the tenancy ended.*

For the following reasons, I find the Tenant did not follow and submit documentation exactly as prescribed by the *Act* and “Policy Guideline #49 Tenant’s Direct Request – Deposits”:

The Tenant did not provide a copy of the signed tenancy agreement showing the initial amount of rent, the amount of security deposit required, and if applicable, the amount of pet damage deposit required. Further, the Tenant did not provide any other evidence to satisfy this requirement.

The Tenant did not provide a completed copy of the forwarding address given to the landlord, as the Form RTB-47 provided to the Residential Tenancy Branch was unsigned and undated; nor did the Tenant provide a copy of the condition inspection report with the forwarding address provided. Further, the Tenant did not provide any other evidence to satisfy this requirement.

The Tenant did not provide a completed Proof of Service of Forwarding Address, as the Form RTB-41 provided to the Residential Tenancy Branch is missing confirmation of service, meaning the Tenant both failed to indicate the form of service and failed to sign and date the form. Further, the Tenant did not provide any other evidence to satisfy this requirement.

Based on the foregoing, I find the Tenant's application has significant omissions and deficiencies; as a result of those omissions and deficiencies I find the Tenant has not proven the Landlord was served with the Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act*.

Therefore, the Tenant's application for a Monetary Order for the return of security deposit and pet damage deposit is dismissed with leave to reapply. As the Tenant was not successful in this application, I find 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 seeking the return of security deposit and pet damage deposit, with leave to reapply.

I dismiss the Tenant's request to recover the \$100.00 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 24, 2020

Residential Tenancy Branch