



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 seeking the return of his security deposit.

The tenant submitted a signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form on which the tenant declares that on July 11, 2020 the tenant served the landlord with the Notice of Direct Request Proceeding, along with copies of supporting documents, via registered mail, to an address which is different than the service address for the landlord as depicted in the tenancy agreement.

On the “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form, the tenant has indicated that the Notice of Direct Request Proceeding documents were sent via registered mail addressed to the rental unit. The tenant provided a copy of the Canada Post transaction receipt containing the tracking number to confirm this mailing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of all or a portion of his security 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 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 Notice, 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 Requests. There can be no omissions or deficiencies with items being left open to interpretation or inference.

Section 89 of the *Act* provides the approved methods by which an application for dispute resolution can be served. Section 89 provides, in part, as follows:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

(a) by leaving a copy with the person;

- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

(2) An application by a landlord under section 55 *[order of possession for the landlord]*, 56 *[application for order ending tenancy early]* or 56.1 *[order of possession: tenancy frustrated]* must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

Under the provisions of Policy Guideline #49 – Tenant's Direct Requests, the onus is on the tenant to serve the Notice of Direct Request Proceeding in a manner approved under section 89 of the *Act*. Section 89 of the *Act* does permit a respondent to be served the Direct Request Proceeding documents by way of registered mail.

On Proof of Service of the Tenant's Notice of Direct Request Proceeding form, the tenant has indicated that the Direct Request Proceeding documents were served by way of registered mail to an address that is not the same as the approved service address for the landlord, as indicated in the tenancy agreement. The tenancy agreement depicts that the service address for the landlord is a mailing address located in Alberta. Additionally, on the Tenant's Monetary Order Worksheet for an Expedited

Return of Security Deposit and/or Pet Damage Deposit (the Monetary Order Worksheet), on two occasions the tenant provides that the landlord lives in Alberta.

Therefore, I find that the tenant has not provided any written submissions to demonstrate why he chose to serve the Notice of Direct Request Proceeding documents to the landlord via registered mail addressed to the rental unit if he knew the landlord resides in Alberta. Additionally, the tenant has not provided any explanation as to why he did not serve the documents using the service address provided for the landlord in the tenancy agreement.

If the parties had agreed that the address to which the Direct Request Proceeding documents were mailed was an approved alternate service address for the landlord, within the narrow scope of the Direct Request process, the tenant bears the burden to provide proof to support any such agreement. I find that the address to which the documents were mailed does not appear in any of the evidentiary material provided by the tenant as an approved alternate service address for the landlord, and there is no evidence before me to demonstrate that the parties agreed that the tenant may serve the documents to the landlord via an alternate address that differs from the service address for the landlord as listed in the tenancy agreement.

I further find that there is no evidence before me that establishes that the tenant was given leave to serve the Notice of Direct Request Proceeding documents in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with sections 89(1)(e) or 89(2)(e) of the *Act*.

Based on the foregoing, I find that by serving the Notice of Direct Request Proceeding documents via registered mail to an address that differs from the service address for the landlord listed in the tenancy agreement, and one that is not established as an alternate service address for the landlord, the tenant has not served the Notice of Direct Request Proceeding documents in accordance with the *Act*. I find that the tenant has not sufficiently established that the Notice of Direct Request Proceeding documents have been served in accordance with Policy Guideline #49, and further find that I am not able to confirm service of the Notice of Direct Request to the landlord, which is a requirement of the Direct Request process.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the applicant 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. I find that there are deficiencies with this application, as outlined above, which cannot be

clarified by way of the Direct Request Proceeding. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material, or oral testimony, which may clarify the questions raised by these inconsistencies.

Based on the foregoing, I find that the tenant has not served the landlord with the Notice of Direct Request Proceeding documents containing the tenant's application in accordance with section 89 of the Act. Therefore, I dismiss the tenant's application for a Monetary Order seeking the return of his security deposit, 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

The tenant's application for a Monetary Order seeking the return of his security deposit is dismissed with leave to reapply.

The tenant's 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