



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

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 which declares that on August 19, 2020 the tenant served the landlord with the Notice of Direct Request Proceeding, along with copies of supporting documents, via registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the tenant, and in accordance with sections 89 and 90 of the *Act*, I find that the landlord is deemed to have received the Direct Request Proceeding documents on August 24, 2020, the fifth day after their registered 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*?

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.

On the tenant's Application for Dispute Resolution by Direct Request (the "application"), the tenant has requested a Monetary Order seeking the return of his security deposit in the amount of \$2,500.00.

The tenant provided an incomplete evidentiary package. The tenant provided a screenshot of a text message which is purportedly addressed to the landlord in which the tenant provided his forwarding address. The tenant also provided photographs of the tenancy agreement, but did not provide a complete tenancy agreement. The tenant provided photographs which depict the first page of the tenancy agreement in one-half segments, and a photograph of the last page of the tenancy agreement.

Analysis

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 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. There can be no omissions or deficiencies with items being left open to interpretation or inference.

Section 59 of the *Act* establishes that an Application for Dispute Resolution must “include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings.”

I have reviewed all documentary evidence provided by the tenant. Residential Tenancy Policy Guideline # 49 contains the details about the key elements that need to be considered when making an application for Direct Request. Policy Guideline # 49 states that when making an Application for Dispute Resolution by Direct Request to seek return of a security deposit, the tenant must provide the following documents:

- *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;*
- *If a pet damage deposit was accepted after the tenancy began, a receipt for the deposit;*
- *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;*
- *A completed Proof of Service of Forwarding Address (Form RTB-41);*
- *A Tenant’s Direct Request Worksheet (Form RTB-40); and*
- *The date the tenancy ended.*

I find that the tenant’s application does not contain all of the required documents cited above and is therefore incomplete. The tenant has not provided a copy a completed Proof of Service of Forwarding Address form (Form RTB-41), a Tenant’s Direct Request Worksheet (Form RTB-40), and a complete, signed tenancy agreement.

The tenant has not provided any documentary evidence to demonstrate the date on which the tenancy ended and the date on which his forwarding address may have been served to the landlord.

Section 88 of the *Act* provides the approved methods by which documents can be served. Section 88 reads, in part, as follows:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

On the Application for Dispute Resolution by Direct Request, the tenant provides that he provided his forwarding address to the landlord by way of text message. I find that by serving the forwarding address by way of text message, the tenant has not served the forwarding address in a manner consistent with the service provisions for documents as provided under section 88 of the Act, as text message is not an approved method of service under section 88 of the Act.

I further find that there is no evidence before me that establishes that the tenant was given leave to serve the forwarding address in an alternative fashion as ordered by a

delegate of the director of the Residential Tenancy Branch in accordance with section 88(i) of the *Act*.

Based on the foregoing, I find that the tenant has not demonstrated that the forwarding address was properly served to the landlord in accordance with section 88 the *Act*, which is a requirement of the Direct Request process as outlined in Policy Guideline #49.

Of particular relevance is that the tenant did not provide any evidence to demonstrate that he provided his forwarding address in writing to the landlord as required in accordance with section 38(1) of the *Act*. As it appears that the tenant may not have satisfied the requirement of providing his forwarding address to the landlord in accordance with section 88 of the *Act*, it may not be open to the tenant to seek the return of his security deposit pursuant to the other relevant subsections of section 38 of the *Act*.

Policy Guideline #49 establishes that the tenant must provide, when making an application for dispute resolution by direct request, a copy of the tenancy agreement. In the absence of a complete tenancy agreement which establishes that the parties listed on the Application for Dispute Resolution by Direct Request endorsed the terms of the tenancy agreement by the signing the agreement to enter into a tenancy, I find that the tenant's application contains a deficiency which does not permit me to consider this application for dispute resolution via the Direct Request process.

Based on the foregoing, I find that the tenant has submitted an incomplete Application for Dispute Resolution by way of Direct Request which does not include the required documents cited in Policy Guideline # 49. I further find that I am not able to consider the tenant's Application for Dispute Resolution by way of the Direct Request process without the documents and requisite information cited above, which form a part of the Application.

As previously indicated, 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.

I find that there are deficiencies with this application, as outlined above, which cannot be clarified within the narrow scope of the Direct Request process. 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 dismiss the tenant's application seeking the seeking the return of his security deposit, with leave to reapply.

It remains open to the tenant to reapply for dispute resolution via the Direct Request process if all requirements for an application for dispute resolution via Direct Request, as outlined in Policy Guideline #49, can be met, or, in the alternative, the tenant may wish to submit an application for dispute resolution to be heard via a participatory hearing.

It remains open to the tenant to review section 38 of the Act to determine whether he has adhered to the requirement of providing his forwarding address in writing to the landlord at the end of the tenancy if the return of his security deposit is sought. The tenant may wish to determine if he needs to serve—or re-serve—his forwarding address in writing to the landlord using a method of service approved under section 88 of the Act.

Conclusion

I dismiss the tenant's application seeking the return of his security deposit, with 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: August 20, 2020

Residential Tenancy Branch