



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 which declares that on September 17, 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 September 22, 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*?

Is the tenant entitled to recover the filing fee for this application from the landlord pursuant to section 72 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 \$1,350.00.

The tenant provided an evidentiary material package which does not include a completed "Proof of Service of Forwarding Address" form (Form RTB-41), as the tenant has left blank relevant sections of the form and has not specified the manner in which his forwarding address may have been provided to the landlord or the date on which the forwarding address may have been provided to the landlord.

The tenant provided a copy of a "Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit" form (Notice of Forwarding Address form) on which the tenant asserted that he provided his forwarding address in writing to the landlord by way of registered mail.

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.

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.*

Policy Guideline # 49 additionally provides the following:

The tenant must prove they served their forwarding address to the landlord. An applicant is required to complete the Proof of Service of Forwarding Address (Form RTB-41) for this purpose.

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 of a completed Proof of Service of Forwarding Address form (Form RTB-41), as the tenant has left blank relevant sections of the form and has not specified the manner in which his forwarding address may have been provided to the landlord or the date on which the

forwarding address may have been provided to the landlord. On the form, the tenant provided a written statement depicting that the tenant spoke with the landlord over the phone with respect to the return of the security deposit. There is no information on the form to suggest that the tenant provided his forwarding address in writing to the landlord, as is required under section 38 of the Act.

The tenant provided a copy of a "Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit" form (Notice of Forwarding Address form) on which the tenant asserted that he provided his forwarding address in writing to the landlord by way of registered mail. However, the form is not signed by the tenant and also does not state the date on which the tenant contends that the forwarding address was served to the landlord by way of registered mail. Additionally, the tenant has not provided any proof, such as a Canada Post Customer Receipt or transaction receipt containing a tracking number, to accompany his claim that his forwarding address may have been provided to the landlord on an unspecified date.

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, 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.

As noted above, the tenant has submitted an incomplete application which does not include the required documents cited in Policy Guideline # 49. I 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 cited above, which form a part of a complete Application for Dispute Resolution by Direct Request. Additionally, the tenant has not proven that his forwarding address in writing was provided 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 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 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.

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

I dismiss the tenant's application seeking the return of his security 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: September 23, 2020

Residential Tenancy Branch