



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 seeking the return of their security deposit.

The tenants submitted a signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form on which the tenants declare that on September 25, 2020 the tenants served the landlord with the Notice of Direct Request Proceeding, along with copies of supporting documents, via registered mail. The tenants 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 tenants, 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 30, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of all or a portion of their security deposit pursuant to section 38 of the *Act*?

Are the tenants 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 tenants' Application for Dispute Resolution by Direct Request (the "application"), the tenants have requested a Monetary Order seeking the return of their security deposit in the amount of \$900.00.

As part of their evidentiary material package, the tenants provided, in part, a copy of a "Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit" form, on which the tenants asserted that they provided their forwarding address to the landlord by way of text message via the "Whatsapp" messaging service on July 30, 2020 and by way of an email message addressed to the landlord on September 05, 2020.

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.*

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 tenants asserted that they provided their forwarding address to the landlord by way of email and text message. I find that by serving the forwarding address by way of email and text message, the tenants have not served the forwarding address in a manner consistent with the service provisions for documents as provided under section 88 of the *Act*, as email and text message are not an approved methods of service under section 88 of the *Act*.

I further find that there is no evidence before me that establishes that the tenants were 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 tenants have 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 tenants did not provide any evidence to demonstrate that they provided their forwarding address in writing to the landlord as required in accordance with section 38(1) of the Act, in a manner approved by the Act. As it appears that the tenants have not have satisfied the requirement of providing their forwarding address to the landlord in accordance with section 88 of the Act, it is not open to the tenants to seek the return of their security deposit pursuant to the other relevant subsections of section 38 of the Act via 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 tenants' application seeking the seeking the return of their security deposit, with leave to reapply.

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

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

I dismiss the tenants' application seeking the return of their security deposit, with leave to reapply.

I dismiss the tenants' 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: October 05, 2020

Residential Tenancy Branch