



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM 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 tenants for a Monetary Order for the return of double the security deposit and the pet damage deposit (the deposits).

The tenants submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on September 24, 2020, the tenants sent each of the landlords the Notice of Direct Request Proceeding by registered mail. The tenants provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation for the return of a security deposit and a pet damage deposit pursuant to sections 38 and 67 of the *Act*?

Are the tenants entitled to recover the filing fee for this application 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.

The tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenants, indicating a monthly rent of \$1,500.00, a security deposit of \$750.00, and a pet damage deposit of \$750.00, for a tenancy commencing on May 1, 2019;
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the forwarding address) dated September 1, 2020;

- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was personally served to the landlords at 12:20 pm on September 1, 2020; and
- A copy of a Tenant's Monetary Order Worksheet for an Expedited Return of Security Deposit and/or Pet Damage Deposit (the Monetary Order Worksheet). showing the amount of deposits paid by the tenants and indicating the tenancy ended on September 1, 2020.

Analysis

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 that such evidentiary material 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.

In this type of matter, the tenants must prove they served the landlords with the Tenant's Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act* which permits service by sending a copy by registered mail to the address at which the landlord resides or carries on business as a landlord.

I find that there is no address for service for the landlords listed in the tenancy agreement. There is also no evidence or documentation to show whether the landlords provided the tenants the address used to send the Tenant's Notice of Direct Request Proceeding documents or whether the landlords reside or carry on business as landlords at this address.

The tenants must also prove that they served the landlords with the forwarding address in a manner that is considered necessary as per sections 71(2) (a) and 88 of the *Act*.

On the Proof of Service of the Forwarding Address there is no signature of a witness, or a signature of the person who received the forwarding address, to confirm service of the forwarding address to the landlords.

As I am not able to confirm service of the Tenant's Notice of Direct Request Proceeding or the forwarding address to the landlords, which is a requirement of the Direct Request Proceeding, I find that a hearing is necessary to address this issue.

Conclusion

I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing to be conducted by an arbitrator appointed under the *Act* is required in order to determine the details of the tenants' application.

Notices of Reconvened Hearing are enclosed with this interim decision. The applicants must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon each of the landlords within three (3) days of receiving this decision in accordance with section 89 of the *Act*.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at <http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/information-sheets/rtb114.pdf> that explain evidence and service requirements.

For more information see our website at: gov.bc.ca/landlordtenant. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020

Victoria: 250-387-1602

Elsewhere in BC: 1-800-665-8779

This interim 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 06, 2020

Residential Tenancy Branch