



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM 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 for the return of the security deposit (the deposit).

The tenant submitted four signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on October 23, 2020, the tenant served the landlords the Notice of Direct Request Proceeding in person and by registered mail. The tenant had a witness sign two of the Proof of Service Tenant's Notice of Direct Request Proceeding forms to confirm personal service. The tenant also provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm the mailings.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?

Is the tenant 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 tenant submitted the following relevant evidentiary material:

- A copy of a tenancy agreement which was signed by Landlord L.H. and the tenant on September 1, 2019, indicating a monthly rent of \$640.00 and a security deposit of \$320.00, for a tenancy commencing on September 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 9, 2020;
- 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 deposit paid by the tenant and indicating the tenancy ended on August 31, 2020;
- A copy of a letter from the landlords to the tenant discussing the state of the rental unit after the tenant's move and indicating the *Residential Tenancy Act* does not apply to the living accommodation; and
- A copy of a statement from Person M.B., a former tenant of the landlords detailing why the *Act* does apply to the living situation.

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.

The tenant submitted a copy of a letter from the landlords indicating that an Arbitrator determined the living accommodation is exempt from the *Act* in a previous Dispute Resolution decision. However, the tenant also submitted a copy of a statement from a former tenant, Person M.B., providing details about why the *Act* does apply to the living accommodation.

For the above reason, I find that there is a question regarding whether I have jurisdiction to make a decision in this matter. I find that a participatory hearing is required in order to determine jurisdiction.

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 tenant's application.

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant 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: November 06, 2020

Residential Tenancy Branch