



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 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 attest that on October 28, 2020 the tenant served the landlord with the Notice of Direct Request Proceeding documents (the “documents”), along with copies of supporting documents, via registered mail, to an address which has not been proven to be an approved service address for the landlord. The tenants have sent the registered mail package containing the documents to the rental unit which they vacated.

Analysis

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.

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

In the Direct Request process, the onus is on the tenant to prove they served the landlord with the Notice of Direct Request proceeding documents with all the required documents, as cited in Policy Guideline #49, and in accordance with section 89 of the *Act*.

Under the provisions of Policy Guideline #49 – Tenant's Direct Requests, the onus is on the tenant to serve the Notice of Direct Request Proceeding in a manner approved under section 89 of the *Act*. Section 89 of the *Act* does permit a respondent to be served the Direct Request Proceeding documents by way of registered mail.

On Proof of Service of the Tenant's Notice of Direct Request Proceeding form, the tenants have indicated that the Direct Request Proceeding documents were served by way of registered mail to an address that has not been proven to be a service address for the landlord. The documents included in the evidentiary material package provided by the tenants do not depict an approved service address for the landlord. In particular, the tenancy agreement does not include an approved service address for the landlord.

The tenants have sent the registered mail package containing the documents to the rental unit. If the parties had agreed that the address to which the Direct Request Proceeding documents were mailed was an approved alternate service address for the landlord, within the narrow scope of the Direct Request process, the tenants bear the burden to provide proof to support any such agreement. I find that the address to which the documents were mailed does not appear in any of the evidentiary material provided

by the tenants as an approved alternate service address for the landlord, and there is no evidence before me to demonstrate that the parties agreed that the tenants may serve the documents to the landlord by addressing them to the address of the rental unit.

The tenants have not provided any evidence to show that the landlord resides at the rental unit or has put in place provisions to receive mail addressed to the rental unit, or whether the landlord permitted the tenants to use the rental unit as an approved service address for the landlord.

I further find that there is no evidence before me that establishes that the tenant was given leave to serve the Notice of Direct Request Proceeding documents in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with sections 89(1)(e) or 89(2)(e) of the *Act*.

Based on the foregoing, I find that by serving the Notice of Direct Request Proceeding documents via registered mail to an address that has not been proven to be an approved service address for the landlord, the tenants may not have served the Notice of Direct Request Proceeding documents in accordance with the *Act*. I find that the tenants have not sufficiently established that the Notice of Direct Request Proceeding documents have been served in accordance with Policy Guideline #49, and further find that I am not able to confirm service of the Notice of Direct Request 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 applicant 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 by way of the Direct Request Proceeding. 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.

I find I am not able to confirm service of the Notice of Direct Request Proceeding to the landlord, which is a requirement of the Direct Request process, and that a participatory 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 applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the landlord 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/rbt114.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 10, 2020

Residential Tenancy Branch