



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 seeking the return of his security deposit.

The tenant submitted two signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” forms on which the tenant declares that on October 19, 2020 the tenant served each of the above-named landlords with the Notice of Direct Request Proceeding, along with copies of supporting documents, via registered mail. The tenant provided two copies of the Canada Post documents containing the tracking numbers to confirm these mailings. 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 landlords are deemed to have received the Direct Request Proceeding documents on October 24, 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 \$1,000.00.

As part of his evidentiary material package, the tenant provided, in part, a copy of a residential tenancy agreement which was not signed by either the tenant or the landlord. The tenancy agreement does not contain the full, legal name of the tenant.

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.

Within the Direct Request process, the tenancy agreement is considered to be a vital document which establishes the parties to the tenancy agreement, the correct address of the rental unit, and the details agreed upon by the parties to the agreement, such as the day in the month on which the rent is due.

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.*

The *Residential Tenancy Regulation* provides, in part, the following with respect to the requirements for tenancy agreements:

12 (1) A landlord must ensure that a tenancy agreement is

(b) signed and dated by both the landlord and the tenant,

I find that the tenant has provided a copy of a tenancy agreement which does not adhere to the requirements for tenancy agreements as prescribed in section 12 of the *Residential Tenancy Regulation*. The tenancy agreement provided by the tenant does not include the signature of any of the parties listed on the tenancy agreement to demonstrate that the parties to the agreement endorsed the terms of the tenancy agreement by providing their respective signatures on the agreement to enter into a tenancy agreement.

I find that the tenancy agreement does not adhere to section 13 of the Act, as it does not indicate the correct legal name of the tenant, as the complete name of the tenant as depicted on the tenant's Application for Dispute Resolution by Direct Request does not match the name provided for the tenant as noted on the tenancy agreement.

In the absence of a complete tenancy agreement which depicts the correct legal for the tenant and establishes that the parties endorsed the terms of the tenancy agreement by the signing the agreement, I find that the tenant's application contains a deficiency which does not permit me to consider this application for dispute resolution via 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.

Based on the foregoing, I find that I am not able to consider the tenant's Application for Dispute Resolution by way of the Direct Request process and that a participatory hearing is necessary. I find that a participatory hearing will provide the proper venue to hear the tenant's application for a monetary order seeking the return of his security deposit.

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 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. 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
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 12, 2020

Residential Tenancy Branch