



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

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on November 4, 2020, the tenants sent the landlord the Notice of Direct Request Proceeding by registered mail. The tenants provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 been served with the Direct Request Proceeding documents on November 9, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation for the return of a security 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 an e-mail sent from the tenants to the landlord on October 19, 2020, providing the forwarding address and a copy of a reply e-mail from the landlord also dated October 19, 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 sent to the landlord by registered mail at 12:00 pm on November 2, 2020;
- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the forwarding address was sent to the landlord on November 2, 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 deposit paid by the tenants and indicating the tenants vacated the rental property on October 15, 2020.

Analysis

Section 38(1) of the *Act* states that within fifteen days of the tenancy ending and the landlord receiving the forwarding address, the landlord may either repay the deposits or make an application for dispute resolution claiming against the deposits.

The tenants have indicated the forwarding address was sent to the landlord on November 2, 2020 by registered mail. Section 90 of the *Act* states that a document served by registered mail is considered received five days after it is sent.

In accordance with sections 88 and 90 of the *Act*, I find that the landlord was deemed served with the forwarding address on November 7, 2020, five days after its registered mailing.

Based on the forwarding address sent by registered mail, I find that the fifteenth day for the landlord to have either returned the deposit or filed for dispute resolution was November 22, 2020.

The tenants have also submitted a copy of an e-mail sent to the landlord on October 19, 2020, providing the forwarding address. The tenants have submitted a copy of a reply e-mail from the landlord also dated October 19, 2020 to confirm the forwarding address was received by the landlord.

I note that e-mail is not considered a method of service in accordance with section 88 of the *Act*. However, if the landlord acknowledges receipt of the forwarding address, e-mail service may be accepted despite the service requirements of the *Act*.

Based on a forwarding address received by e-mail on October 19, 2020, I find that the fifteenth day for the landlord to have either returned the deposit or filed for dispute resolution would have been November 3, 2020.

I find that the tenants applied for dispute resolution on November 2, 2020, before the fifteen days under section 38(1) of the *Act* had passed, using either the registered mail service or the e-mail service.

I find that the tenants made their application for dispute resolution too early.

Therefore, the tenants' application for a Monetary Order for the return of the security deposit is dismissed with leave to reapply.

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 for a Monetary Order for the return of the security deposit with leave to reapply.

I dismiss the tenants' application to recover the 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: November 24, 2020

Residential Tenancy Branch