



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes MNSDS-DR

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 her security deposit.

The tenant submitted a signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form which declares that on October 10, 2020 the tenant served the landlord with the Notice of Direct Request Proceeding, along with copies of supporting documents, via registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 landlord is deemed to have received the Direct Request Proceeding documents on October 15, 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 her security deposit pursuant to section 38 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.

As part of her evidentiary material package, the applicant tenant did not submit a copy of the tenancy agreement. “Policy Guideline #49, Tenant’s Direct Requests- Deposits”

sets out that a complete Application for Dispute Resolution by Direct Request must include a copy of the tenancy agreement.

The tenant provided a document containing a written statement depicting that the parties did not have a written tenancy agreement.

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 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 – Direct Requests. 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 initial amount of rent, the amount of security deposit required, and if applicable, the amount of pet damage deposit required.

“Policy Guideline #49, Direct Requests” provides the guidelines with respect to the Direct Request process. The policy guideline provides that the onus is on the tenant to ensure that they have included all required documents necessary for an application for dispute resolution via the Direct Request process. Policy Guideline #49 establishes that the tenant must provide, when making an application for dispute resolution by direct request, a copy of the tenancy agreement.

In the absence of a complete tenancy agreement which establishes that the parties listed on the Application for Dispute Resolution by Direct Request endorsed the terms of a written tenancy agreement by the signing the agreement to enter into a tenancy, I find that the applicant's application contains a deficiency which does not permit me to consider this application for dispute resolution via the Direct Request process.

I find that a participatory hearing will provide the proper venue to make a determination on the issues identified above and to hear the applicant's request seeking the return of her 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 02, 2020

Residential Tenancy Branch