



Dispute Resolution Services

Page: 1

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 19, 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 24, 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 a residential tenancy agreement which was signed by the landlord on May 11, 2020 and the tenants on May 12, 2020, indicating a monthly rent of \$2,530.00 and a security deposit of \$1,265.00, for a tenancy commencing on June 15, 2020;

- A copy of an e-mail from the tenants to the landlord dated October 5, 2020, providing the forwarding address and requesting the return of the deposit; 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 tenancy ended on September 14, 2020.

Analysis

In this type of matter, the tenants must prove that they served the landlord with the forwarding address in accordance with section 88 of the *Act*.

Section 88 of the *Act* allows for service by either sending the forwarding address to the landlord by mail, by leaving a copy with the landlord or their agent, by leaving a copy in the landlord's mailbox or mail slot, attaching a copy to the landlord's door or by leaving a copy with an adult who apparently resides with the landlord.

I find that the tenants have sent the forwarding address by e-mail, which is not a method of service as indicated above. The tenants have also not submitted a copy of a reply e-mail from the landlord or any other evidence to demonstrate that landlord received the tenants' forwarding address despite it being served contrary to the *Act*.

I find that the forwarding address has not been served in accordance with section 88 of the *Act*.

Therefore, I dismiss the tenants' application for the return of the security deposit based on the forwarding address dated October 5, 2020, without leave to reapply.

The tenants have also submitted evidence along with their Proof of Service Tenant's Notice of Direct Request Proceeding documents showing that another copy of the forwarding address was sent to the landlord by registered mail on November 19, 2020. However, I find the tenants have not submitted a copy of the forwarding address sent by registered mail.

Furthermore, in accordance with section 38(1) of the *Act*, the landlord has fifteen days from the time the landlord receives the forwarding address to either return the deposit to the tenants or file an application for dispute resolution requesting to keep it.

I find that the tenants filed for dispute resolution on November 10, 2020, before the second forwarding address was sent to the landlord. For this reason, I dismiss the tenants' application for the return of the security deposit based on the forwarding address dated November 19, 2020 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

The tenants' application for the return of the security deposit based on the forwarding address dated October 5, 2020, is dismissed, without leave to reapply.

The tenants' application for the return of the security deposit based on the forwarding address dated November 19, 2020 is dismissed with leave to reapply.

The tenants' application to recover the filing fee paid for this application is dismissed 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: December 04, 2020

Residential Tenancy Branch