



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 tenants for a Monetary Order for the return of double the security deposit (the deposit).

The tenants submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on November 27, 2020, the tenants sent each of the landlords the Notice of Direct Request Proceeding by registered mail. The tenants provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the tenants and in accordance with sections 89 and 90 of the *Act*, I find that the landlords are deemed to have been served with the Direct Request Proceeding documents on December 2, 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*?

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 Landlord N.C.W. on May 15, 2019 and the tenants on May 8, 2019, indicating a monthly rent of \$1,350.00 and a security deposit of \$675.00, for a tenancy commencing on July 1, 2019;

- A copy of a notice to vacate from the tenants dated September 30, 2020, indicating the tenancy would end as of October 31, 2020 and providing the forwarding address for the return of the deposit;
- 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 personally served to Landlord C.N.W. and sent to Landlord L.W. by e-mail on September 30, 2020;
- A copy of an e-mail sent from the tenants to Landlord L.W. dated September 30, 2020 including the notice to vacate and forwarding address as an attachment;
- A copy of a reply e-mail from Landlord L.W. dated October 1, 2020, acknowledging receipt of the forwarding address; and
- A copy of a Tenant's Direct Request Worksheet showing the amount of deposit paid by the tenants and indicating the tenancy ended on October 31, 2020.

Analysis

I have reviewed all documentary evidence and I find that the tenancy ended on October 31, 2020, the date indicated on the tenants' notice to vacate and on the Tenant's Direct Request Worksheet.

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 deposit or make an application for dispute resolution claiming against the deposit.

I find that the fifteenth day for the landlords to have either returned the deposit or filed for dispute resolution was November 15, 2020.

However, section 90 of the *Act* states that a document sent by regular or registered mail is deemed received on the fifth day after it was sent. If the landlords sent the tenants the deposit by mail on their last day, the tenants may not have received the deposits until November 20, 2020.

I find that the tenants applied for dispute resolution on November 18, 2020, before they could have known whether the landlords complied with the provisions of section 38(1) of the *Act*, and that the earliest date the tenants could have applied for dispute resolution was November 21, 2020.

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 double the security deposit is dismissed with leave to reapply.

Conclusion

I dismiss the tenants' application for a Monetary Order for the return of double the security deposit with 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 14, 2020

Residential Tenancy Branch