



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 29, 2020, the tenants personally served the landlord the Notice of Direct Request Proceeding. The tenants had a witness sign the Proof of Service Tenant's Notice of Direct Request Proceeding to confirm personal service. Based on the written submissions of the tenant and in accordance with sections 89 of the *Act*, I find that the landlord has been duly served with the Direct Request Proceeding documents on November 29, 2020.

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*?

Analysis

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 that such evidentiary material 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.

Section 59 of the *Act* establishes that an Application for Dispute Resolution must “include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings.”

Policy Guideline #49 on Tenant’s Direct Request provides the following requirements:

When making a request, an applicant must provide:

- A copy of the signed tenancy agreement showing the initial amount of rent and the amount of security deposit and/or pet damage deposit required;
- If a pet damage deposit was accepted after the tenancy began, a receipt for the pet damage deposit;
- A copy of the forwarding address given to the landlord;
- A completed Proof of Service of Forwarding Address;
- A Tenant’s Direct Request Worksheet; and
- The date the tenancy ended.

I find that, with the original Application for Dispute Resolution, the tenants have not submitted a copy of a written tenancy agreement, a copy of the forwarding address provided to the landlord, a Proof of Service of Forwarding Address form, or a Tenant’s Direct Request Worksheet.

I note that the tenants submitted some of the required documents along with the Notice of Direct Request Proceeding; however, in a Direct Request Proceeding, all documents must be submitted at the time of filing the Application.

Furthermore, I note that the additional documentation indicates that the forwarding address was dated November 30, 2020 and provided to the landlord on November 29, 2020.

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.

Even if I were to accept the tenants’ late submissions, I find that the tenants have not provided the landlord the full 15 days to either return the deposit or file an application requesting to keep it.

For these reasons, 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 the tenants are not entitled to recover the 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: December 24, 2020

Residential Tenancy Branch