



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DIRECT REQUEST DECISION

Dispute Codes MNSDS-DR

Introduction & Analysis

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 filed by the Tenants for a monetary order for the return of double the security deposit and/or the pet damage deposit, and to recover the filing fee.

The Tenants submitted a signed Proof of Service - Tenant's Notice of Direct Request Proceeding which declares that on December 3, 2020, the Tenants sent the Notice of Direct Request Proceeding and supporting documents to B.B. by registered mail. The Tenants provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

In this type of matter, the Tenants must prove they served the Landlords with the Notice of Direct Request Proceeding with all the required inclusions as indicated in section 89 of the *Act* which permits service “by sending a copy by registered mail...”

The definition of registered mail is set out in section 1 of the *Act* as “any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.”

In this case, Canada Post’s Online Tracking System shows that although the package was delivered, a signature was not required. As a result, I find it is not possible to confirm delivery to a named person and that service does not meet the definition of registered mail as defined under the *Act*.

Further, in an *ex parte* Direct Request Proceeding, the onus is on the Tenants 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 Tenants 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.

In this case, the documents submitted by the Tenants give rise to uncertainty with respect to the terms of the agreement between the parties, and whether or not a forwarding address was provided in accordance with the *Act*.

First, section 12(1)(b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to “be signed and dated by both the landlord and the tenant.” In this case, the Tenants submitted page 1 of 6 of the tenancy agreement and a two-page addendum. In the absence of the missing pages of the tenancy agreement, find that it cannot be determined if the tenancy agreement was signed and dated by the parties. I also note the Tenants have named K.U. and K.B. as parties although their names do not appear on the partial tenancy agreement submitted.

Second, section 13(2)(f)(vii) of the *Act* establishes that a tenancy agreement is required to identify “the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.” In the absence of the missing pages of the tenancy agreement, I find that the amount of the security deposit or pet damage deposit cannot be determined, which are necessary to determine the Tenants’ entitlement to the return of the deposits.

Third, the Tenants must prove that they provided the Landlords with the forwarding address in a manner that is considered necessary as per sections 71(2)(a) and 88 of the *Act*. The documents submitted by the Tenants include an image of a hand-written note to the Landlords including a forwarding address. The image depicts a page that has not been removed from the coil notebook in which it was written. There is no additional documentation in support of delivery of the forwarding address.

Considering the above, I find that the Tenants have not served the Landlords with notice of this Application in accordance with section 89 of the *Act*. Further, considering the deficiencies with respect to the terms of the agreement and provision of the forwarding address, I dismiss the Application for a monetary order for the return of the security deposit and/or the pet damage deposit with leave to reapply.

As the Tenants have not been successful, I find that they are not entitled to recover the \$100.00 filing fee paid to make the Application.

Conclusion

The Tenants' Application for a monetary order for the return of double the amount of the security deposit and/or the pet damage deposit is dismissed with leave to reapply.

The Tenants' Application to recover the filing fee 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 18, 2020

Residential Tenancy Branch