



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-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 Tenant for a monetary order for the return of double the security deposit and/or the pet damage deposit, and for the recovery of the filing fee paid to make the application.

The Tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that the Tenant served with Landlord with the Notice of Direct Request Proceeding and supporting documents by registered mail on January 6, 2021. The Tenant provided a copy of the Canada Post receipt containing the Tracking Number to confirm this mailing. 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 these documents on January 11, 2021, five days after they were mailed.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation for the return of a security deposit and/or a pet damage deposit pursuant to sections 38 and 67 of the *Act*?
2. Is the Tenant 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 Tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement signed by the Landlord and the Tenant on February 1, 2020, indicating a monthly rent of \$800.00, a security deposit of \$400.00 and a pet damage deposit of \$400.00, for a tenancy commencing on February 1, 2020;
- A copy of a text message exchange from December 8-11, 2020, during which the participants discussed the end of the tenancy and the return of the deposits;
- A copy of an Interac statement dated January 27, 2020 confirming a payment of \$800.00 for a security deposit and a pet damage deposit;
- A copy of a Condition Inspection Report signed by the Landlord; and
- A copy of a Tenant's Direct Request Worksheet showing the amount of the security deposit and pet damage deposit paid and indicating that the tenancy ended on November 24, 2020 although the Tenant vacated the rental unit on December 1, 2020.

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.

Policy Guideline #49 provides direction to tenants making an application for the return of a security deposit and/or a pet damage deposit by direct request. It states:

To make a direct request for return of a security deposit and/or pet damage deposit, an applicant must provide certain documents and information that prove the landlord failed to comply with section 38(1). When making a request, an applicant must provide:

- 1. A copy of the signed tenancy agreement showing the initial amount of rent, the amount of security deposit required, and if applicable, the amount of pet damage deposit required;*
- 2. If a pet damage deposit was accepted after the tenancy began, a receipt for the deposit;*
- 3. A copy of the forwarding address given to the landlord (Form RTB-47 is recommended, but not required) or a copy of the condition inspection report with the forwarding address provided;*
- 4. A completed Proof of Service of Forwarding Address (Form RTB-41);*
- 5. A Tenant's Direct Request Worksheet (Form RTB-40); and*
- 6. The date the tenancy ended.*

The language in Policy Guideline #49 is mandatory.

In this case, I find that the Tenant did not submit a completed Proof of Service of Forwarding Address form as required. Although the email exchange and the Condition Inspection Report referred to above each contain a partial address, they do not include a complete mailing address. Specifically, with respect to the address written on the Condition Inspection Report, the Tenant's submissions provided with the application indicate that the Landlord "was away before and after moving out and didn't want to meet for inspection". The Tenant did not sign the Condition Inspection Report on move-in or move-out.

In addition, the date the tenancy ended is unclear. The Direct Request Worksheet appears to contradict itself by stating the tenancy ended on November 24, 2020 by mutual written agreement (a copy of which was not submitted) but that the Tenant did not vacate the rental unit until December 1, 2020.

Considering the above, I find there is insufficient evidence before me to grant the relief sought. I order that the Tenant's request for the return of double the security deposit and pet damage deposit is dismissed with leave to reapply.

As the Tenant has not been successful, I order that the Tenant's request to recover the filing fee paid to make the application is dismissed without leave to reapply.

Conclusion

The Tenant's request for the return of double the security deposit and pet damage deposit is dismissed with leave to reapply.

The Tenant's request to recover the filing fee paid to make the 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: January 22, 2021

Residential Tenancy Branch