



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 a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on January 17, 2021, the tenants personally served the respondent the Notice of Direct Request Proceeding by registered mail. 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 tenants and in accordance with section 89 and 90 of the *Act*, I find that the respondent has been duly served with the Direct Request Proceeding documents on January 17, 2021.

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

The tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which names a landlord who is not the respondent, indicating a monthly rent of \$2,595.00 and a security deposit of \$1,297.50, for a tenancy commencing on July 2, 2018;
- A copy of a Condition Inspection Report which was signed by the respondent and one of the tenants on December 29, 2020, indicating the tenant provided a forwarding address at the time of the move-out inspection; 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 December 19, 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.

I have reviewed all documentary evidence and I find that the landlord's name on the tenancy agreement does not match the landlord named as a respondent. I also find that the unit number for the rental address on the agreement does not match the unit number of the rental address on the Application for Dispute Resolution.

Furthermore, I find that the tenants have not submitted a copy of a Proof of Service of Forwarding Address form, which is a requirement of the Direct Request process as outlined in Policy Guideline #49.

Finally, I find that the tenants made their application for dispute resolution too early.

I accept the evidence before me that the landlord received the forwarding address on December 29, 2020, the day the move-out inspection was conducted.

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

I find that the fifteenth day for the landlord to have either returned the deposits or filed for dispute resolution was January 13, 2021.

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 landlord sent the deposit by mail on their last day, the tenants may not have received the deposits until January 18, 2021.

I find that the tenants applied for dispute resolution on January 14, 2021, before they could have known whether the landlord 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 January 19, 2021.

For these reasons, 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: February 03, 2021

Residential Tenancy Branch