



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

The Tenants submitted a signed Proof of Service - Tenant's Notice of Direct Request Proceeding which declares that the Tenants served the Landlord with the Notice of Direct Request Proceeding and supporting documents by registered mail on January 29, 2021. The Tenants provided a copy of the Canada Post receipts containing the Tracking Number to confirm this mailing. Based on the written submissions of the Tenants and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have received these documents on February 3, 2021, five days after they were mailed.

Issues to be Decided

1. Are the Tenants 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. Are the Tenants 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 Tenants submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the Tenants and the Landlord on November 28, 2019, indicating a monthly rent of \$1,600.00 and a security deposit of \$800.00, for a tenancy commencing on December 15, 2019;
- Three copies of a Residential Tenancy Branch decision dated January 19, 2021;
- A copy of a Notice of Dispute Resolution Proceeding dated September 22, 2020 concerning a hearing on January 8, 2021.

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 the following direction to tenants making a claim for the return of a security deposit and/or a pet damage deposit via the Direct Request process:

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.*

[Reproduced as written.]

The language in Policy Guideline #49 is mandatory.

In this case, I accept, based on the Residential Tenancy Branch decision dated January 19, 2021, that the Landlord received the Tenants' forwarding address on January 8, 2021. However, the Tenants did not submit a Tenant's Direct Request Worksheet which includes important information concerning the total amount requested, the parties' participation in and completion of a condition inspection report, possible extinguishment of the parties' rights in relation to deposits, and other declarations.

In the absence of a Tenant's Direct Request Worksheet, I find I am unable to grant the relief sought. As a result, I find the Tenants' request for the return of a security deposit and/or a pet damage deposit is dismissed with leave to reapply.

As the Tenants have not been successful, I find the Tenants' request for the recovery of the filing fee is dismissed without leave to reapply.

Conclusion

The Tenants' request for the return of a security deposit and/or a pet damage deposit is dismissed with leave to reapply.

The Tenants' request for the recovery of 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: February 23, 2021

Residential Tenancy Branch