



Dispute Resolution Services

Page: 1

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 the security deposit (the deposit).

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on March 8, 2021, the tenants sent Landlord K.C. the Notice of Direct Request Proceeding by registered mail. The tenants provided a copy of the Canada Post Customer Receipt 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 Landlord K.C. is deemed to have been served with the Direct Request Proceeding documents on March 13, 2021, the fifth day after their registered mailing.

The tenants submitted a second signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on March 8, 2021, the tenants served Landlord A.H. the Notice of Direct Request Proceeding by leaving a copy on the door of the rental unit.

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

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 relevant evidentiary material:

- A copy of a residential tenancy agreement indicating a monthly rent of \$1,300.00 and a security deposit of \$650.00, for a tenancy commencing on April 1, 2017

- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the forwarding address) dated February 1, 2021
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was left in the mail slot of the rental unit and sent to the landlords by registered mail
- A copy of a Canada Post receipt showing the purchase of a pre-paid envelope on February 5, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of deposit paid by the tenants, an authorized deduction of \$650.00, and indicating the tenancy ended on December 31, 2020

Analysis

In this type of matter, the tenants must prove that they served the landlords with the forwarding address in accordance with section 88 of the *Act*.

Section 88 of the *Act* allows for service by either sending the forwarding address to the landlord by mail, by leaving a copy with the landlord or their agent, by leaving a copy in the landlord's mailbox or mail slot, attaching a copy to the landlord's door or by leaving a copy with an adult who apparently resides with the landlord.

I have reviewed all documentary evidence and I find the tenants have indicated the forwarding address was left in the mail slot of the rental unit, and not the landlords' mail slot. For this reason, I find I cannot confirm service of the forwarding address by leaving it in the mail slot.

I also find that the tenants sent the forwarding address by regular mail and not registered mail, on February 5, 2021. While regular mail is not a preferred method of service for a Direct Request Proceeding, I will consider the tenants' application using regular mail.

in accordance with sections 88 and 90 of the *Act*, I find that the landlords were deemed served with the forwarding address on February 10, 2021, five days after its mailing.

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.

I find that the fifteenth day for the landlords to have either returned the deposit or filed for dispute resolution was February 25, 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 landlords sent the deposit by mail on their last day, the tenants may not have received the deposits until March 2, 2021.

I find that the tenants applied for dispute resolution on February 23, 2021, before they could have known whether the landlords 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 March 3, 2021.

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

Therefore, the tenants' application for a Monetary Order for the return of the security deposit is dismissed with leave to reapply.

Conclusion

I dismiss the tenants' application for a Monetary Order for the return of 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: March 19, 2021

Residential Tenancy Branch