



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 by the tenants for a Monetary Order for the return of the security deposit (the deposit).

The tenants submitted one signed Proof of Service Tenant's Notice of Direct Request Proceeding form which declares that on December 12, 2020, the tenants sent the landlords the Notice of Direct Request Proceeding by registered mail. The tenants provided a copy of one Canada Post Customer Receipt containing the tracking number to confirm this mailing was sent to Landlord T.J. The tenants have not submitted a copy of a Canada Post Customer Receipt containing the tracking number to confirm service to Landlord J.J.

Based on the written submissions of the tenants and in accordance with sections 89 and 90 of the *Act*, I find that Landlord T.J. is deemed to have been served with the Direct Request Proceeding documents on December 17, 2020, the fifth day after their registered mailing.

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*?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenants on April 11, 2019, indicating a monthly rent of \$1,090.00 and a security deposit of \$545.00, for a tenancy commencing on May 1, 2019

- A copy of a letter from the tenants to the landlords providing the forwarding address and requesting the return of the deposit
- 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 sent to the landlords by registered mail at 9:13 am on November 13, 2020
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the forwarding address was in fact sent to the landlords on November 12, 2020
- A copy of a Tenant's Direct Request Worksheet showing the amount of deposit paid by the tenants, a partial reimbursement of \$395.00, and indicating the tenancy ended on November 1, 2020

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the landlord was deemed served with the forwarding address on November 17, 2020, five days after its registered 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 December 2, 2020.

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 balance of the deposit by mail on their last day, the tenants may not have received the deposits until December 7, 2020.

I find that the tenants applied for dispute resolution on December 6, 2020, 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 December 8, 2020.

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.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the tenants' application for a Monetary Order for the return of the security deposit with leave to reapply.

I dismiss the tenants' application to recover the filing fee paid for this application 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: March 22, 2021

Residential Tenancy Branch