



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

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on February 25, 2021, the tenant personally served the landlord the Notice of Direct Request Proceeding. The tenant 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 tenant and in accordance with sections 89 of the *Act*, I find that the landlord has been duly served with the Direct Request Proceeding documents on February 25, 2021.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?

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 which was signed by the landlord and the tenant on June 1, 2020, indicating a monthly rent of \$1,300.00 and a security deposit of \$650.00, for a tenancy commencing on June 1, 2020

- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the forwarding address) dated January 26, 2021
- A copy of a witnessed 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 placed in the landlord's mailbox at 11:29 am on January 26, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of deposit paid by the tenant and indicating the tenancy ended on January 10, 2021

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 January 29, 2021, three days after it was placed in the mailbox.

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).

The definition of days in the Residential Tenancy Branch Rules of Procedure states that: "If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open".

I find that the fifteenth day for the landlord to have either repaid the deposit or filed for dispute resolution was February 13, 2021, which was a Saturday. The Residential Tenancy Branch is closed on Saturdays, Sundays, and holidays, meaning that the latest day on which the landlord could have made an application for dispute resolution was on Tuesday, February 16, 2021.

I further find that the tenant applied for dispute resolution on February 15, 2021, before the last day that the landlord had to make an application for dispute resolution, and that the earliest date that the tenant could have applied for dispute resolution was February 17, 2021. The tenant made their application for dispute resolution too early.

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

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

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

I dismiss the tenant's 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 10, 2021

Residential Tenancy Branch