



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 two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on April 10, 2021, the tenants sent the landlords the Notices of Direct Request Proceeding by registered mail. The tenants provided a copy of one Canada Post Customer Receipt containing one Tracking Number to confirm service.

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*?

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.

In this type of matter, the tenants must prove they served the landlords with the Notices of Direct Request proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act* which permits service "by sending a copy by registered mail to the address at which the person resides..."

The tenant must also prove that they served each landlord with the Notice of Direct Request in a manner that is considered necessary as per section 71(2) (a) of the *Act*.

Policy Guideline #12 on Service Provisions provides the following requirement:

“Important: all parties named on an application for dispute resolution must receive notice of the proceedings. Where more than one party is named on an application, each party must be served separately.”

I find that the tenants only submitted a copy of one Canada Post Customer Receipt to confirm one package was sent by registered mail.

In an ex parte hearing, I find that I am not able to determine whether the Notice of Direct Request Proceeding was sent to Landlord S.M., to Landlord T.M., or if the registered mail included two Notices of Direct Request Proceeding, one for each landlord.

I find I am not able to confirm service of the Notices of the Direct Request Proceeding to each of the parties individually as required by sections 71 and 89 of the *Act*.

For this reason, 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: May 03, 2021

Residential Tenancy Branch