



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 May 7, 2021, the tenant sent the landlord the Notice of Direct Request Proceeding by registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord is deemed to have been served with the Direct Request Proceeding documents on May 12, 2021, the fifth day after their registered mailing.

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

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 September 23, 2020, indicating a monthly rent of \$1,600.00 and a security deposit of \$650.00, for a tenancy commencing on October 1, 2020
- A copy of a text message from the tenant to the landlord providing a forwarding address for the return of the deposit
- A copy of an e-mail from the tenant to the landlord dated April 1, 2021 providing a forwarding address for the return of the deposit

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 material does not lend itself to ambiguity or give rise to issues that may need 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 on Tenant's Direct Request states that, when making a request, an applicant must provide:

- A copy of the signed tenancy agreement showing the initial amount of rent and the amount of security deposit and/or pet damage deposit required.
- If a pet damage deposit was accepted after the tenancy began, a receipt for the pet damage deposit.
- A copy of the forwarding address given to the landlord.
- **A completed Proof of Service of Forwarding Address.**
- **A Tenant's Direct Request Worksheet.**
- The date the tenancy ended.

I find that the tenant has not submitted a copy of a Proof of Service of Forwarding Address form or a Tenant's Direct Request Worksheet with the original Application for Dispute Resolution by Direct Request.

I note that the tenant later submitted these documents along with the Proof of Service Notice of Direct Request Proceeding documents. However, in a Direct Request Proceeding, all required documents must be provided at the time of filing.

Furthermore, in this type of matter, the tenant must prove that they served the landlord with the forwarding address in accordance with section 88 of the *Act*, which 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 find that the tenant has sent the forwarding address by text message, which is not a method of service as indicated above. I find that the text message forwarding address has not been served in accordance with section 88 of the *Act*.

Section 89 of the *Act* also provides that a forwarding address may be served "*by any other means of service provided for in the regulations.*"

Section 43(2) of the *Residential Tenancy Regulation* provides that documents “*may be given to a person by emailing a copy to an email address **provided as an address for service by the person.***”

I find that the tenant has also served the forwarding address to the landlord by e-mail. However, I find there is no evidence to demonstrate that the landlord indicated documents could be served by e-mail.

I find the tenant has not demonstrated that the landlord’s e-mail address was provided for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation*.

For this reason, I find that the e-mail forwarding address has not been served in accordance with section 88 of the *Act* or with section 43(2) of the *Regulation*.

Therefore, I dismiss the tenant's application for the return of the security deposit based on the forwarding addresses sent by text message and by e-mail, without leave to reapply.

If the tenant wants to apply through the Direct Request process, the tenant may reissue the forwarding address and serve it in one of the ways prescribed by section 88 of the *Act*, or if reissuing the forwarding address by e-mail, provide sufficient evidence to demonstrate that the e-mail service complies with section 43(2) of the *Regulation*.

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

The tenant's application for the return of the security deposit based on the forwarding addresses sent by text message and by e-mail, is dismissed, without leave to reapply.

The tenant's application to recover the filing fee paid for this application 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: May 20, 2021

Residential Tenancy Branch