



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 double the security deposit (the deposit).

The tenant submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on May 12, 2021, the tenant sent each of the landlords the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenant provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm these mailings.

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 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 landlords' mailbox at 7:57 pm on April 9, 2021

- A copy of a Tenant's Direct Request Worksheet showing the amount of deposit paid by the tenant, a partial reimbursement of \$350.00, and indicating the tenancy ended on February 28, 2021

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.

Section 59 of the *Act* establishes that an Application for Dispute Resolution must "include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings."

Policy Guideline #49 on Tenant's Direct Request provides the following requirements:

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 written tenancy agreement or a copy of the forwarding address that was provided to the landlords. I further find that I am not able to consider the tenant's Application for Dispute Resolution through the Direct Request process without these documents which form a part of the Application.

Furthermore, the tenant has indicated they placed the forwarding address in the landlords' mailbox on April 9, 2021. A document placed in a mailbox on April 9, 2021 is deemed received on April 12, 2021, three days later.

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.

If the document was received by the landlord on April 12, 2021, the fifteenth day for the landlord to have either returned the deposits or filed for dispute resolution would have been April 27, 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 landlord sent balance of the deposit by mail on their last day, the tenant may not have received the deposit until May 2, 2021.

I find that the tenant applied for dispute resolution on April 28, 2021, before they could have known whether the landlord complied with the provisions of section 38(1) of the *Act*.

For these reasons, 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 for a Monetary Order 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: May 25, 2021

Residential Tenancy Branch