



Dispute Resolution Services

Page: 1

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 double 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 May 25, 2021, the tenants sent the landlords the Notice of Dispute Resolution Proceeding - Direct Request by e-mail. The tenants provided a copy of the outgoing e-mail containing an attachment of the package to confirm this 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*?

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

Analysis

In this type of matter, the tenants must prove they served the landlords with the Notice of Dispute Resolution Proceeding - Direct Request and all documents in support of the application as per section 89 of the *Act*.

Section 89 of the *Act* provides that a Notice of Dispute Resolution Proceeding - Direct Request may be served "*by any other means of service provided for in the regulations.*"

On March 1, 2021, section 43(2) of the *Residential Tenancy Regulation* was created and 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 tenants have served the Notice of Dispute Resolution Proceeding - Direct Request to the landlords by e-mail. The tenants have indicated this e-mail address was provided by the landlords on the tenancy agreement.

I acknowledge that the tenancy agreement includes an e-mail address for one of the landlords; however, I find there is no indication that the landlords specifically agreed that documents could be served by e-mail.

Furthermore, the tenancy agreement providing the e-mail address was signed on May 6, 2020. I find the landlords cannot have provided consent to use e-mail as a method of service in accordance with a regulation that did not come into effect until March 1, 2021.

I find the tenants have not demonstrated that the landlords' e-mail address was provided for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation*.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the landlords and for this reason, 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 the tenants are not entitled to recover the 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: May 28, 2021

Residential Tenancy Branch