



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

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on June 17, 2021, the tenants sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenants provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

Based on the written submissions of the tenants and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on June 17, 2021 and are deemed to have been received by the landlord on June 22, 2021, the fifth day after their registered mailing.

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*?

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 tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants, indicating a monthly rent of \$2,100.00 and a security deposit of \$1,050.00, for a tenancy commencing on May 16, 2020
- A copy of a notice to vacate from the tenants dated April 13, 2021, indicating the tenancy would end as of May 15, 2021 and providing the forwarding address for the return of the deposit
- A copy of a Tenant's Direct Request Worksheet showing the amount of deposit paid by the tenants, and indicating the tenancy ended on May 15, 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 tenants have not submitted a copy of a Proof of Service of Forwarding Address form. I also find that the Tenant's Direct Request Worksheet submitted has not been signed by the tenants.

I further find that I am not able to consider the tenants' Application for Dispute Resolution without these complete documents which form a part of the Application.

For this reason, the tenant's 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 that the tenants are not entitled to recover the \$100.00 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: June 28, 2021

Residential Tenancy Branch