



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-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 to obtain monetary compensation for the return of the security deposit and the pet damage deposit (the deposits) and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the tenants on June 16, 2021.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on July 27, 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 July 27, 2021 and are deemed to have been received by the landlord on August 1, 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 and a pet damage 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's agent and the tenants on September 18, 2019, indicating a monthly rent of \$2,300.00, a security deposit of \$1,150.00, and a pet damage deposit of \$1,000.00, for a tenancy commencing on October 15, 2019
- A copy of a Condition Inspection Report which was signed by the landlord and one of the tenants on May 31, 2021, indicating the tenants provided a forwarding address at the time of the move-out inspection
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposits paid by the tenants, and indicating the tenancy ended on May 31, 2021

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the landlord was duly served with the forwarding address on May 31, 2021, the day the tenancy ended and the move-out inspection was conducted.

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 deposits or make an application for dispute resolution claiming against the deposits.

I find that the fifteenth day for the landlord to have either returned the deposits or filed for dispute resolution was June 15, 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 the deposits by mail on their last day, the tenants may not have received the deposits until June 20, 2021.

I find that the tenants applied for dispute resolution on June 16, 2021, before they could have known whether the landlord complied with the provisions of section 38(1) of the *Act*, and that the earliest date the tenants could have applied for dispute resolution was June 21, 2021.

I find that the tenants made their application for dispute resolution too early.

Therefore, the tenants' application for a Monetary Order for the return of the security deposit and the pet damage 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 and the pet damage 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: August 12, 2021

Residential Tenancy Branch