



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 to obtain monetary compensation for the return of the security deposit (the deposit) and to recover the filing fee paid for the application.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on August 13, 2021, the tenants sent Landlord G.G. the Notice of Dispute Resolution Proceeding - Direct Request by e-mail.

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 an *ex parte* Direct Request Proceeding, the onus is on the tenants 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 tenants 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.

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 indicated on the Notice as per section 89 of the *Act*.

I find that the tenants have not provided a copy of a Proof of Service Tenant's Notice of Direct Request Proceeding to establish service of the Notice of Dispute Resolution Proceeding - Direct Request to Landlord J.G. In its place, I find that the tenants submitted a second copy of the Proof of Service of Forwarding Address form discussing service of the forwarding address to the landlords.

The tenants have submitted a copy of a Proof of Service Tenant's Notice of Direct Request Proceeding indicating that the Direct Request documents were served to Landlord G.G. by e-mail.

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.*"

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 the tenants have not submitted a copy of the outgoing e-mail showing the Direct Request documents were sent as attachments. I also find there is no evidence to demonstrate that Landlord G.G. indicated documents could be served by e-mail.

I find the tenants have not demonstrated that Landlord G.G.'s 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: September 20, 2021

Residential Tenancy Branch