



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 to obtain monetary compensation for the return of the security deposit (the deposit) 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 tenant on August 2, 2021.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on August 19, 2021, the tenant sent the respondent the Notice of Dispute Resolution Proceeding - Direct Request by e-mail. The tenant provided a copy of the outgoing e-mail containing the Direct Request documents as attachments to confirm this service.

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

The tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by a landlord who is not the respondent and the tenant on November 4, 2020, indicating a monthly

rent of \$2,200.00 and a security deposit of \$2,200.00, for a tenancy commencing on November 15, 2020

- A copy of several e-mails sent from the tenant to the respondent requesting the return of the deposit

Analysis

In this type of matter, the tenant must prove they served the respondent 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.*”

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 that the tenant has sent the Notice of Dispute Resolution Proceeding - Direct Request to the respondent by e-mail. However, I find there is no evidence to demonstrate that the respondent indicated documents could be served by e-mail.

I find the tenant has not demonstrated that the respondent’s e-mail address was specifically 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 respondent.

Furthermore, section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

The tenant has submitted a copy of an e-mail requesting the deposit be refunded though a deposit into a bank account. However, I find the tenant has not submitted a copy of a mailing address that was provided to the landlord.

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 the tenant is not entitled to recover the 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 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 07, 2021

Residential Tenancy Branch