



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 double 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 tenants on August 5, 2021.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on August 25, 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 August 25, 2021 and are deemed to have been received by the landlord on August 30, 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 on July 5, 2021 and Tenant J.I. on July 6, 2021, indicating a monthly rent of \$3,050.00 and a security deposit of \$1,525.00, for a tenancy commencing on July 15, 2021
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the forwarding address) dated August 5, 2021
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was sent to the landlord by registered mail at 12:35 pm on July 15, 2021
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the forwarding address was sent to the landlord on July 15, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenants and indicating the tenants were never permitted to move into the rental unit

Analysis

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).

Section 44 of the *Act* provides the ways in which a tenancy may end. The tenants have indicated that the landlord refused to provide the tenants access to the rental unit. In a Direct Request Proceeding, I find I am not able to determine the precise date the tenancy ended.

I also find that the forwarding address provided by the tenants is dated August 5, 2021; however, the Proof of Service of Forwarding Address indicates that the forwarding address was sent to the landlord by registered mail on July 15, 2021. I find that the forwarding address form dated August 5, 2021 could not have been sent to the landlord on July 15, 2021, before it was completed.

However, if a different version of the forwarding address was mailed on July 15, 2021, section 90 of the *Act* states that it would have been considered received by the landlord on July 20, 2021. Fifteen days from July 20, 2021 is August 4, 2021.

If the landlord returned the deposit by mail on August 4, 2021, the tenants may not have received the deposit until August 9, 2021.

I find that the tenants applied for dispute resolution on August 5, 2021, before they could have known whether the landlord complied with the provisions of section 38(1) of the *Act*.

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 \$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: September 10, 2021

Residential Tenancy Branch