



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.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on August 31, 2021, the tenants sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by e-mail. The tenants provided a copy of the outgoing e-mail containing the Direct Request documents as attachments to confirm this service.

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 this type of matter, the tenants must prove they served the landlord 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.*"

On March 1, 2021, section 43(2) of the *Residential Tenancy Regulation* was created to provide 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 tenants have sent the Notice of Dispute Resolution Proceeding - Direct Request to the landlord by e-mail.

The tenants submitted a copy of a tenancy agreement containing an e-mail address for the landlord. However, I find the tenancy agreement does not specifically indicate that the e-mail address can be used to serve documents.

Furthermore, I find the agreement states the tenancy started on August 1, 2020, before section 43(2) of the Regulation was created. I find a landlord cannot have agreed to serve documents in accordance with legislation that did not yet exist.

I find the tenants have not demonstrated that the landlord'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 landlord in accordance with the *Act* and *Regulation*. 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 15, 2021

Residential Tenancy Branch