



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 17, 2021.

The tenants submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on September 3, 2021, the tenants sent each of the landlords the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenants provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm these mailings.

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 September 3, 2021 and are deemed to have been received by the landlord on September 8, 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 landlords and one of the tenants on January 17, 2017, indicating a monthly rent of \$2,200.00 and a security deposit of \$1,100.00, for a tenancy commencing on February 1, 2017
- A copy of a notice to vacate which was signed by the tenants on June 25, 2021, indicating the tenancy would end as of July 31, 2021, and providing a forwarding address for the return of the deposit
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form which indicates that the forwarding address was sent to the landlords by e-mail on June 26, 2021 and provided the landlords on the Condition Inspection Report on July 31, 2021
- A copy of an e-mailed notice to vacate sent from the tenants to the landlords on June 26, 2021 and a copy of a reply e-mail from the landlords dated June 27, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenants and indicating the tenancy ended on July 31, 2021

Analysis

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 the tenancy ended on July 31, 2021, in accordance with the notice to vacate and the Tenant's Direct Request Worksheet.

I find that the fifteenth day for the landlords to have either returned the deposit or filed for dispute resolution was August 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 landlords sent the deposit by mail on their last day, the tenants may not have received the deposit until August 20, 2021.

I find that the tenants applied for dispute resolution on August 17, 2020, before they could have known whether the landlords 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 August 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 double the security 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 double 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 17, 2021

Residential Tenancy Branch