



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.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the tenants on August 23, 2021.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on September 10, 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 an attachment to confirm this service.

Based on the written submissions of the tenant and in accordance with sections 43(2) and 44 of the *Residential Tenancy Regulation*, I find that the Direct Request Proceeding documents were served on September 10, 2021 and are deemed to have been received by the landlord on September 13, 2021, the third day after their e-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 and the tenants on November 24, 2020, indicating a monthly rent of \$2,200.00 and a security deposit of \$1,100.00, for a tenancy commencing on December 1, 2020
- A copy of an e-mail from the tenants to the landlord dated August 3, 2021, providing the forwarding address and requesting the return of the deposit
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenants, an authorized deduction of \$100.00, and indicating the tenancy ended on July 31, 2021

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 evidentiary material does not lend itself to ambiguity or give rise to issues that may need further 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.

Policy Guideline #49 on Tenant's Direct Request states that an applicant must provide specific documents, including a Proof of Service of Forwarding Address form. I find the tenants have not submitted a copy of the Proof of Service of Forwarding Address (RTB-41), which is a requirement of the Direct Request Process.

In addition, section 44 of the *Residential Tenancy Regulation* states that a document sent by e-mail is considered received on the third day after it was sent.

The tenants submitted a copy of an e-mail dated August 3, 2021 providing the forwarding address. I find that the landlord was deemed served with the forwarding address on August 6, 2021, three days after it was sent.

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 deposit or make an application for dispute resolution claiming against the deposit.

I find that the fifteenth day for the landlord to have either returned the deposit or filed for dispute resolution was August 21, 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 landlord sent the deposit by mail on their last day, the tenants may not have received the deposit until August 26, 2021.

I find that the tenants applied for dispute resolution on August 23, 2021, before they could have known whether the landlord 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 27, 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 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 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 24, 2021

Residential Tenancy Branch