



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-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 double the security deposit and the pet damage deposit (the deposits) 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 19, 2021.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on September 10, 2021, the tenant personally served Person D.T. the Notice of Dispute Resolution Proceeding - Direct Request. The tenant had Person D.T. sign the Proof of Service Notice of Direct Request Proceeding confirm personal service.

Based on the written submissions of the tenant and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were duly served to Person D.T. on September 10, 2021.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security deposit and a pet damage 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 Person D.T. and the tenant, indicating a monthly rent of \$1,410.00, a security deposit of \$687.50,

and a pet damage deposit of \$300.00, for a tenancy commencing on September 1, 2018

- A copy of a Condition Inspection Report which was signed by Person D.T. and the tenant on July 31, 2021, indicating the tenant provided a forwarding address at the time of the move-out inspection
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposits paid by the tenant and indicating the tenancy ended on July 31, 2021

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the tenant 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 tenant 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.

I have reviewed all documentary evidence and I find the business landlord named on the Application for Dispute Resolution by Direct Request does not match the individual landlord (Person D.T.) named on the tenancy agreement and all other documents submitted with the application.

I also note that Policy Guideline #49 on Tenant Direct Requests states that an applicant must provide a copy of a Proof of Service of Forwarding Address (RTB-41) form. I find the tenant has not submitted a copy of this document which is a requirement of the Direct Request process.

Finally, I note that 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.

The tenant has indicated the tenancy ended on July 31, 2021. I find that the fifteenth day for the landlord to have either returned the deposits 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 landlord sent the deposits by mail on their last day, the tenant may not have received the deposits until August 20, 2021.

I find that the tenant applied for dispute resolution on August 19, 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 tenant could have applied for dispute resolution was August 21, 2021.

I find that the tenant made their application for dispute resolution too early.

For these reasons, the tenant's application for a Monetary Order for the return of double the security deposit and the pet damage deposit is dismissed with leave to reapply.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the tenant's application for a Monetary Order for the return of double the security deposit and the pet damage 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 24, 2021

Residential Tenancy Branch