



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 tenants to obtain monetary compensation for the return of the security deposit and the pet damage deposit (the deposits) and to recover the filing fee paid for the application.

The tenants submitted a copy of a Canada Post receipt showing two letters were sent on September 15, 2021.

Issue(s) to be Decided

Are the tenants 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*?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

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.

In this type of matter, the tenants must prove they served the landlords with the Notice of Dispute Resolution Proceeding - Direct Request and all documents in support of the application as per section 89 of the *Act*. Policy Guideline #49 on Tenant's Direct Request provides the following requirements:

"Once the package is served, the tenant must complete and submit a Proof of Service Tenant's Notice of Direct Request Proceeding (Form RTB-50) which is provided by the Branch with the Notice of Dispute Resolution Proceeding"

I note that the tenants submitted a copy of a Canada Post receipt showing that two letters were sent on September 15, 2021. However, I find the tenants have not provided a copy of the Proof of Service Tenant's Notice of Direct Request Proceeding forms which are a requirement of the Direct Request process as detailed in Policy Guideline #49.

Furthermore, the tenants must prove they served the landlords with the Direct Request documents as per section 89 of the *Act* which permits service "*by sending a copy by registered mail...*"

The definition of registered mail is set out in section 1 of the *Act* as "*any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.*"

I find that the receipt submitted by the tenants is for letters sent by regular mail and not registered mail.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding – Direct Request to the landlords in accordance with section 89 of the *Act*.

For this reason, the tenants' application for a Monetary Order for the return of the security deposit and the pet damage 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 and the pet damage 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: October 04, 2021