



Dispute Resolution Services

Page: 1

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 two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on September 24, 2021, the tenants served each landlord the Notice of Dispute Resolution Proceeding - Direct Request in person and by e-mail. The tenants provided a copy of one e-mail dated September 23, 2021, containing the Direct Request documents as an attachment confirm this service. The tenants also submitted a copy of a text message sent to the landlords indicating that a Notice of Dispute Resolution Proceeding – Direct Request was left at the landlords' door.

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 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* which permits service by either leaving a copy with the person or their agent or sending a copy by registered mail to the address at which the person resides or carries on business as a landlord.

The tenants submitted a copy of a text message indicating that they left a Notice of Dispute Resolution Proceeding – Direct Request package for the landlords at landlords' door, which is not a method of service in accordance with section 89 of the *Act*.

For this reason, I find I cannot consider service of the Notices of Dispute Resolution Proceeding – Direct Request by leaving them at the landlords’ door.

The tenants have also indicated that they served each landlord in person. Policy Guideline # 49 contains the details about the key elements that need to be considered when making an application for Direct Request.

Proof of service of the Notice of Direct Request Proceeding may take the form of:

- registered mail receipt and printed tracking report;
- **a receipt signed by the landlord, stating they took hand delivery of the document(s); or**
- **a witness statement that they saw the tenant deliver the document(s).**

On the Proof of Service Tenant's Notice of Direct Request Proceeding forms there is no signature of a witness, or a signature of the person who received the documents, to confirm service of the Notices of Direct Request Proceeding to the landlords.

For this reason, I find I cannot confirm in-person service of the Notices of Dispute Resolution Proceeding – Direct Request to the landlords.

Finally, I note that 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.*”

Section 43(2) of the *Residential Tenancy Regulation* provides 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.***”

Policy Guideline #12 on Service Provisions provides that “*if there has been a history of communication between parties by email, but a party has not specifically provided an email address for service purposes, it is not advisable to use email as a service method.*”

I find there is no evidence to demonstrate that the landlords indicated documents could be served by e-mail. I find the tenants have not demonstrated that the landlords’ e-mail address was provided specifically for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation*.

For this reason, I find I am not able to confirm service of the Notices of Dispute Resolution Proceeding – Direct Request to the landlords by e-mail.

As I am not able to confirm service of the Notices of Dispute Resolution Proceeding - Direct Request to the landlords in accordance with the *Act* or *Regulation*, 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 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 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 21, 2021

Residential Tenancy Branch