



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 September 24, 2021.

The tenants submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on October 2, 2021, the tenants sent each landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenants provided a copy of the Canada Post 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 October 2, 2021 and are deemed to have been received by the landlords on October 7, 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 on April 29, 2020 and the tenants on May 3, 2020, indicating a monthly rent of \$2,000.00, a security deposit of \$1,000.00, and a pet damage deposit of \$500.00, for a tenancy commencing on June 1, 2020
- A copy of an e-mail from the tenants to the landlords dated July 27, 2021, providing the forwarding address
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was sent to the landlords by e-mail at 12:33 pm on July 27, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposits paid by the tenants and indicating the tenancy ended on July 15, 2021

Analysis

In this type of matter, the tenants must prove that they served the landlords with the forwarding address in accordance with section 88 of the *Act*.

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(1) 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.***"

I find that the tenants have sent the forwarding address by e-mail. However, 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 for service of documents, as required by section 43(1) of the *Residential Tenancy Regulation*.

For this reason, I find that the forwarding address has not been served in accordance with section 88 of the *Act*.

Therefore, I dismiss the tenants' application for the return of the security deposit based on the e-mail forwarding address dated July 27, 2021, without leave to reapply.

If the tenants want to apply through the Direct Request process, the tenants may reissue the forwarding address and serve it in one of the ways prescribed by section 88

of the *Act* or, if reissuing the forwarding address by e-mail, provide sufficient evidence to demonstrate that the e-mail service complies with section 43(1) of the *Regulation*.

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

The tenants' application for the return of the security deposit based on the e-mail forwarding address dated July 27, 2021, is dismissed, without leave to reapply.

The tenants' application to recover the filing fee paid for this application is dismissed 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: November 03, 2021

Residential Tenancy Branch