



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 tenant 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 tenant on October 8, 2021.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on October 15, 2021, the tenant sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

Based on the written submissions of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on October 15, 2021 and are deemed to have been received by the landlord on October 20, 2021, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security 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

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 tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement indicating a monthly rent of \$2,600.00 and a security deposit of \$1,050.00, for a tenancy commencing on December 1, 2020
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the forwarding address) dated July 31, 2021
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form which indicates that the forwarding address was sent to the landlord by e-mail at 2:52 pm on August 8, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenant and indicating the tenancy ended on May 31, 2021

Analysis

In this type of matter, the tenant must prove that they served the landlord 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.*"

Policy Guideline #49 on Tenant's Direct Request provides that service of the Notice of Dispute Resolution Proceeding – Direct Request by e-mail may be proven by providing:

- A copy of the outgoing email showing the email address used, the date the email was sent, and any attachments included in the email and
- The RTB-51 - Address for Service or other document that sets out the party's email address for service

The tenant has indicated they sent the forwarding address to the landlord by e-mail. However, I find the tenant has not submitted a copy of the outgoing e-mail containing the forwarding address to confirm this service.

I also find there is no evidence to demonstrate that the landlord indicated documents could be served by e-mail. I find the tenant has not demonstrated that the landlord's 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 tenant's application for the return of the security deposit based on the forwarding address e-mailed August 8, 2021, without leave to reapply.

If the tenant wants to apply through the Direct Request process, the tenant 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 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

The tenant's application for the return of the security deposit based on the forwarding address e-mailed on August 8, 2021, is dismissed, without leave to reapply.

The tenant's 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 18, 2021

Residential Tenancy Branch