



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.

The tenant submitted a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (RTB-41) which declares that on September 29, 2021, the tenant sent the landlord the forwarding address by e-mail.

The tenant provided a copy of an e-mail sent to the landlord on September 29, 2021 containing some of the Direct Request documents as attachments.

The tenant also submitted a copy of an Address for Service form (RTB-51) which was signed by the tenant on October 2, 2021, indicating the tenant agreed to send and receive documents by e-mail.

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*?

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.

In this type of matter, the tenant must prove they served the landlord 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 find the tenant has not provided a copy of the Proof of Service Tenant's Notice of Direct Request Proceeding form (RTB-50) which is a requirement of the Direct Request process as detailed in Policy Guideline #49.

In its place, I find the tenant has submitted a copy of the Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (RTB-41) discussing service of the forwarding address to the landlord.

Furthermore, 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."*

The tenant submitted a copy of an Address for Service form (RTB-51); however, I find the landlord has not signed the form to indicate they agree to use e-mail for service of documents.

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(2) of the *Residential Tenancy Regulation*.

Finally, the tenant submitted a copy of an e-mail containing the following documents as attachments:

- Proof of Service Notice of Expedited Hearing (RTB-9)
- Tenant Application for Dispute Resolution - Direct Request for Return of Security or Pet Damage Deposit (RTB-12tdr)
- Tenant Direct Request Worksheet (RTB-40)
- Tenant Proof of Service of Forwarding Address (RTB-41)
- Tenant Notice of Forwarding Address (RTB-47)

However, I find the e-mail does not include a copy of the Notice of Dispute Resolution Proceeding – Direct Request or the Direct Request factsheet (RTB-131), which must also be served to the respondent.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding – Direct Request and all the supporting documents to the landlord in accordance with the *Act* and *Regulation*.

For this reason, the tenant's application for a Monetary Order for the return of the security 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 the security 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: November 10, 2021

Residential Tenancy Branch