



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 tenant 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.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the tenant on September 30, 2021.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on October 7, 2021, the tenant sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to two different addresses. The tenant provided a copy of the envelopes containing the Canada Post tracking numbers to confirm these mailings.

Issue(s) to be Decided

Is the tenant 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*?

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 text message from the tenant dated September 21, 2021, providing an e-mail address, and requesting the return of the deposits

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.

Section 38(1) of the *Act* states that within fifteen days of the tenancy ending and the landlord receiving the forwarding address, the landlord may either repay the deposits or make an application for dispute resolution claiming against the deposits.

In order to submit an Application for Dispute Resolution through the Residential Tenancy Branch, the landlord must provide a mailing address for the respondent tenant.

I find that the tenant texted the landlord an e-mail address for the return of the deposits and did not provide a forwarding mailing address.

I find I am not able to confirm whether the landlord had the opportunity to comply with section 38(1) of the *Act* by filing an Application for Dispute Resolution requesting to keep the deposits.

Furthermore, the tenant must prove that they served the landlord with the forwarding address in accordance with section 88 of the *Act*.

Section 88 of the *Act* allows for service by either sending the forwarding address to the landlord by mail, by leaving a copy with the landlord or their agent, by leaving a copy in the landlord's mailbox or mail slot, attaching a copy to the landlord's door or by leaving a copy with an adult who apparently resides with the landlord.

The tenant submitted a copy of a text message requesting the return of the deposits, which is not a method of service in accordance with section 88 of the *Act*.

For these reasons, the tenant's application for a Monetary Order for the return of the deposits based on the forwarding e-mail address of September 21, 2021, is dismissed without leave to reapply.

The tenant must reissue a forwarding mailing address and serve it in one of the ways prescribed by section 88 of the *Act*, or according to Residential Tenancy Policy Guideline #49, if the tenant wants to apply through the Direct Request process.

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 and the pet damage deposit based on the forwarding e-mail address dated September 21, 2021, without 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 08, 2021

Residential Tenancy Branch