



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 double the security deposit (the deposit) and to recover the filing fee paid for the application.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on October 16, 2021, the tenant sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by e-mail and registered mail to the rental unit.

The tenant provided a copy of the outgoing e-mail containing the Direct Request documents as attachments to confirm the e-mailing. The tenant also provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm the 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*?

Analysis

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 indicated on the Notice as per section 89 of the *Act*.

The tenant has indicated they sent the Notice of Dispute Resolution Proceeding – Direct Request to the landlord by registered mail to the rental unit.

Section 89 of the *Act* permits service by sending a copy by registered mail to the address at which the landlord resides or carries on business as a landlord.

I find that the address indicated on the Proof of Service Tenant's Notice of Direct Request Proceeding form is not the landlord's address for service as established in the tenancy agreement. There is also no indication as to whether the landlord now resides or carries on business as a landlord at the rental unit or whether they have provided the tenant this address for service of documents.

For this reason, I find I am not able to confirm service of the Direct Request documents to the landlord by registered mail.

The tenant has also indicated they sent the Notice of Dispute Resolution – Direct Request to the landlord by e-mail.

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.*”

The tenant submitted a copy of a tenancy agreement which includes an e-mail address for the landlord. However, I find the agreement does not specify that the e-mail address may be used to serve documents.

The tenant also submitted a copy of several e-mails sent to the landlord, some including documents and photographs as attachments. However, I find the tenant has not submitted a copy of any e-mail responses from the landlord to demonstrate that the landlord received the documents sent 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(2) of the *Residential Tenancy Regulation*.

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

As I am not able to confirm service of the Direct Request documents, 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 the tenant is not entitled to recover the 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 19, 2021

Residential Tenancy Branch