



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 20, 2021.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on October 22, 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.

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 rental agreement which was signed by the tenant on June 24, 2021
- A copy of an e-mail sent from the tenant to the landlord dated October 4, 2021, providing the forwarding address, and requesting the return of the deposit

- 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 on October 4, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenant, a partial reimbursement of \$108.00, and indicating the tenancy ended on August 16, 2021

Analysis

The tenant has submitted a copy of an e-mail sent to the landlord on October 4, 2021, providing a forwarding address for the return of the deposit.

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.***"

I find that the tenant has submitted a copy of previous e-mails exchanged between the tenant and the landlord. However, I find there is no evidence to demonstrate that the landlord specifically indicated documents could be served by e-mail.

I find the tenant has not sufficiently 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*.

Furthermore, 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.

Even if the landlord received the forwarding address on the same day it was e-mailed, October 4, 2021, the fifteenth day for the landlord to have either returned the deposits or filed for dispute resolution would have been October 19, 2021.

However, section 90 of the *Act* states that a document sent by regular or registered mail is deemed received on the fifth day after it was sent. If the landlord sent balance of the deposit by mail on October 19, 2021, the tenant may not have received the deposit until October 24, 2021.

I find that the tenant applied for dispute resolution on October 20, 2020, before they could have known whether the landlord complied with the provisions of section 38(1) of the *Act*.

I find that the tenant made their application for dispute resolution too early.

Therefore, 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 30, 2021

Residential Tenancy Branch