



Dispute Resolution Services

Page: 1

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 tenants 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 tenants on December 6, 2021.

The tenants submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on December 9, 2021, the tenants sent each landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenants provided a copy of the Canada Post receipt containing the tracking numbers to confirm these mailings.

Based on the written submissions of the tenants and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on December 9, 2021 and are deemed to have been received by the landlords on December 14, 2021, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the tenants 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*?

Are the tenants 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 tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenants, indicating a monthly rent of \$6,750.00, a security deposit of \$3,375.00, and a pet damage deposit of \$3,375.00, for a tenancy commencing on April 1, 2020
- A copy of a Condition Inspection Report which was signed by one of the landlords and one of the tenants on November 21, 2021, indicating the tenants provided a forwarding address at the time of the move-out inspection
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposits paid by the tenants and indicating the tenancy ended on November 15, 2021

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the tenants 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 tenants 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 59 of the *Act* establishes that an Application for Dispute Resolution must "include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings."

Policy Guideline #49 on Tenant's Direct Request provides the following requirements:

When making a request, an applicant must provide:

- A copy of the signed tenancy agreement showing the initial amount of rent and the amount of security deposit and/or pet damage deposit required.
- If a pet damage deposit was accepted after the tenancy began, a receipt for the pet damage deposit.
- A copy of the forwarding address given to the landlord.
- **A completed Proof of Service of Forwarding Address.**
- A Tenant's Direct Request Worksheet.
- The date the tenancy ended.

I find that the tenants have not submitted a copy of a Proof of Service of Forwarding Address form, which is a requirement of the Direct Request process.

I also note that 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.

The tenants have indicated the tenancy ended on November 15, 2021 and the landlords were provided the forwarding address on November 21, 2021.

I find that the fifteenth day from November 21, 2021 was December 6, 2021. I also find that the tenants applied for dispute resolution on December 6, 2021, the last day the landlords had to return the deposits or file for dispute resolution.

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

Therefore, the tenants' application for a Monetary Order for the return of the security deposit and the pet damage deposit is dismissed with leave to reapply.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the tenants' application for a Monetary Order for the return of the security deposit and the pet damage deposit with leave to reapply.

I dismiss the tenants' 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: January 13, 2022

Residential Tenancy Branch