



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDP-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 pet damage 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 tenants on December 19, 2021.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on December 24, 2021, the tenants sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenants provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

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 24, 2021 and are deemed to have been received by the landlord on December 29, 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 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 indicating a monthly rent of \$2,500.00, a security deposit of \$1,250.00, and a pet damage deposit of \$1,000.00, for a tenancy commencing on June 15, 2021
- A copy of an e-mail from the tenants to the landlord dated November 26, 2021, providing the forwarding address, and requesting the return of the deposits
- 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 at 1:10 pm on November 26, 2021
- A copy of e-mails demonstrating that the landlord and the tenants have previously exchanged documents by e-mail
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposits paid by the tenants, a partial reimbursement of \$938.83, and indicating the tenancy ended on November 26, 2021

Analysis

I have reviewed all documentary evidence and in accordance with sections 43(1) and 44 of the *Residential Tenancy Regulation*, I find that the forwarding address was served on November 26, 2021 and is considered to have been received by the landlord on November 29, 2021, three days after its e-mailing.

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.

I find that the fifteenth day for the landlord to have either returned the deposits or filed for dispute resolution was December 14, 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 deposits by mail on their last day, the tenants may not have received the deposits until December 19, 2021.

I find that the tenants applied for dispute resolution on December 19, 2021, before they could have known whether the landlord complied with the provisions of section 38(1) of the *Act*, and that the earliest date the tenants could have applied for dispute resolution was December 20, 2021.

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 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 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 21, 2022

Residential Tenancy Branch