



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 December 21, 2021.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on December 30, 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.

Based on the written submissions of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on December 30, 2021 and are deemed to have been received by the landlord on January 4, 2022, the fifth day after their 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*?

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 residential tenancy agreement which names a landlord who is not the applicant and was signed by the tenant on June 25, 2015, indicating a monthly rent of \$600.00 and a security deposit of \$300.00, for a tenancy commencing on July 1, 2015
- A copy of a text message from the tenant to the landlord 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 text message on December 2, 2021 and that the landlord confirmed receipt of the forwarding address on December 21, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenant and indicating the tenant vacated the rental unit on October 31, 2021

Analysis

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 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.

I find that the tenant has sent the forwarding address by text message, which is not a method of service permitted under the *Act*.

Therefore, I dismiss the tenant's application for the return of the security deposit based on the forwarding address sent by text, without 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.

I also note that, despite not serving according to the *Act*, the tenant has indicated that the landlord acknowledged receipt of the forwarding address on December 21, 2021.

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 deposit(s) or make an application for dispute resolution claiming against the deposit(s).

I find that the tenant applied for dispute resolution on December 21, 2021, the same day the tenant claims the landlord acknowledged receipt of the forwarding address.

The tenant must reissue the forwarding address and serve it in one of the ways prescribed by section 88 of the *Act*. The tenant must also wait 15 days from the time the landlord is considered to have received the forwarding address to provide the landlord the opportunity to comply with section 38(1) of the *Act*.

Conclusion

The tenant's application for the return of the security deposit based on the forwarding address sent by text is dismissed, 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: January 25, 2022

Residential Tenancy Branch