



Dispute Resolution Services

Page: 1

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 tenants to obtain monetary compensation for the return of double 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 tenants on December 10, 2021.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on December 17, 2021, the tenant served Landlord S.S. the Notice of Dispute Resolution Proceeding - Direct Request in person. The tenant had Landlord S.S. sign the Proof of Service Tenant's Notice of Direct Request Proceeding form to confirm personal service.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declare that on December 18, 2021, the tenants served Landlord C.H. the Notice of Dispute Resolution Proceeding - Direct Request in person. The tenants had Landlord C.H. sign the Proof of Service Tenant's Notice of Direct Request Proceeding form to confirm personal service.

Based on the written submissions of the tenant and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were duly served to Landlord S.S. on December 17, 2021 and were duly served to Landlord C.H. on December 18, 2021.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation for the return of a security 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 on August 22, 2021, indicating a monthly rent of \$1,500.00 and a security deposit of \$1,500.00, for a tenancy commencing on September 1, 2021
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the forwarding address) dated November 23, 2021
- A copy of a witnessed Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form which indicates that the forwarding address was served to the landlords in person at 5:00 pm on November 23, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenants and indicating the tenancy ended on November 22, 2021

Analysis

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

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the forwarding address was duly served to the landlords on November 23, 2021.

I find that the fifteenth day for the landlords to have either returned the deposit or filed for dispute resolution was December 8, 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 landlords sent the deposit by mail on their last day, the tenants may not have received the deposit until December 13, 2021.

I find that the tenants applied for dispute resolution on December 10, 2021, before they could have known whether the landlords complied with the provisions of section 38(1) of the *Act*.

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 double the security 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 double the security 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 18, 2022

Residential Tenancy Branch