



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 tenants 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 tenants on February 24, 2022.

The tenants submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on February 28, 2022, 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 Customer Receipts 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 February 28, 2022 and are deemed to have been received by the landlords on March 5, 2022, 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 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 April 16, 2021, indicating a monthly rent of \$3,995.00 and a security deposit of \$1,997.50, for a tenancy commencing on June 1, 2021
- A copy of a text message sent from the tenants to the landlords on January 31, 2022 providing the forwarding address
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit dated February 24, 2022
- 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 landlords by registered mail at 12:50 pm on February 24, 2022
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the forwarding address was sent to the landlords on February 24, 2022
- 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 January 31, 2022

Analysis

In this type of matter, the tenants must prove that they served the landlords 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.

The tenants submitted a copy of a text message containing the forwarding address. I find that text message is not a method of service as indicated above. The tenants have also not provided any evidence, such as a reply from the landlords, to demonstrate that the landlords received the forwarding address text, despite not being served in accordance with section 88 of the *Act*.

For this reason, I cannot consider the forwarding address sent by text message on January 31, 2022.

The tenants' application for a Monetary Order for the return of the security deposit based on the text forwarding address dated January 31, 2022 is dismissed without leave to reapply,

The tenants have also indicated they sent the forwarding address by registered mail. In accordance with sections 88 and 90 of the *Act*, I find that the forwarding address was served on February 24, 2022 and is considered to have been received by the landlords on March 1, 2022, five days after its registered 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 deposit or make an application for dispute resolution claiming against the deposit.

I find that the fifteenth day for the landlords to have either returned the deposit or filed for dispute resolution was March 16, 2022.

I find that the tenants applied for dispute resolution on February 24, 2022, before the landlords' last day to comply 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 the security deposit based on the forwarding address dated February 24, 2022, 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 based on the text forwarding address dated January 31, 2022 without leave to reapply.

I dismiss the tenants' application for a Monetary Order for the return of the security deposit based on the forwarding address dated February 24, 2022, 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: March 22, 2022

Residential Tenancy Branch