



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM
and [tenant name suppressed to protect privacy]

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 for a monetary order for the return of a security deposit and to recover the filing fee.

The Tenants submitted a signed Proof of Service Tenant Notice of Direct Request Proceeding which declares that the Tenants served the Landlord with a Notice of Dispute Resolution Proceeding and supporting documents by registered mail on February 24, 2022, which service was witnessed by MR. The Tenants provided copies of Canada Post receipts which confirm the date and time of purchase and include the tracking number. Pursuant to sections 89 and 90 of the Act, I find that the Landlord is deemed to have received these documents on March 1, 2022, five days after they were mailed.

Issue to be Decided

1. Are the Tenants entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the Act?
2. Are the Tenants entitled to recover the filing fee 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 dated December 3, 2020, indicating a monthly rent of \$1,400.00 and a security deposit of \$700.00, for a tenancy commencing on December 15, 2020;
- A copy of a Notice to Move Out, dated December 27, 2021, advising the Landlord of the Tenants' intention to vacate the rental unit on January 31, 2021, which included a forwarding address;
- A copy of a Proof of Service Tenant Notice of Forwarding Address for Return of Security and/or Pet Damage Deposit confirming service of the Tenants' forwarding address by email and fax on December 27, 2021; and
- A copy of a document containing the email addresses and telephone numbers for the Rental Manager and the Onsite Building Manager; and
- A copy of a Tenant's Direct Request Worksheet dated February 16, 2022, stating the amount of the security deposit (\$750.00) and the pet damage deposit (\$700.00), and that the tenancy ended on January 31, 2022.

Analysis

Policy Guideline #49 provides direction to tenants making an application for dispute resolution by Direct Request. It confirms that a tenant must provide certain documents and information that prove the landlord failed to comply with section 38(1), including a copy of the signed tenancy agreement, a copy of the forwarding address given to the landlord, a completed Proof of Service of Forwarding Address, and a Tenant's Direct Request Worksheet.

With respect to proof of service of the forwarding address, Policy Guideline #49 confirms that a tenant must prove they served their forwarding address to the landlord using any of the methods of service allowed under section 88 of the Act. A tenant must complete a Proof of Service of Forwarding Address for the purpose, which the Tenants have done. However, Policy Guideline #49 also indicates that using the preferred methods of service provided will lessen the likelihood of a Direct Request being adjourned or dismissed. This is because service can be substantiated by using the preferred methods.

In this case, the Tenants did not submit evidence to substantiate service by email (such as a copy of the email and an Address for Service form) or by fax (such as a fax transmission report or some correspondence confirming the Landlord's fax number). As a result, I find I am unable to confirm service of the Tenants' forwarding address on the Landlord in accordance with the Act and Policy Guideline #49.

I also note that the amount of the security deposit as stated in the tenancy agreement (\$700.00) differs from the amount of the security deposit provided in the Tenant's Direct Request Worksheet (\$750.00) but make no findings in that regard.

Considering the above, I find that the Tenants' request for the return of the security deposit is dismissed with leave to reapply. This is not an extension of any time limit established under the Act.

As the Tenants have not been successful, I find that the Tenants' request to recover the filing fee is dismissed without leave to reapply.

Conclusion

The Tenants' request for the return of the security deposit is dismissed with leave to reapply.

The Tenants' request to recover the filing fee is dismissed 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 16, 2022

Residential Tenancy Branch