



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 4, 2022.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on February 10, 2022, 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 February 10, 2022 and are deemed to have been received by the landlord on February 15, 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

The tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on May 31, 2011, indicating a monthly rent of \$1,500.00 and a security deposit of \$750.00, for a tenancy commencing on June 15, 2011

- A copy of an e-mail from the tenants to the landlord and Person V., dated January 6, 2022, 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 and to Person V. by e-mail at 9:58 pm on January 6, 2022
- A copy of a mail tracking confirmation indicating that the e-mail sent on January 6, 2022 was read on January 7, 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 landlord with the forwarding address in accordance with section 88 of the *Act*.

Section 89 of the *Act* provides that a Notice of Dispute Resolution Proceeding - Direct Request may be served "*by any other means of service provided for in the regulations.*"

Section 43(1) of the *Residential Tenancy Regulation* provides that documents "*may be given to a person by emailing a copy to an email address **provided as an address for service by the person.***"

I find that the tenants have sent the forwarding address by e-mail. However, I find there is no evidence to demonstrate that the landlord indicated documents could be served by e-mail.

I find the tenants have not demonstrated that the landlord's e-mail address was provided for service of documents, as required by section 43(1) of the *Residential Tenancy Regulation*.

For this reason, I find that the forwarding address has not been served in accordance with section 88 of the *Act* or section 43(1) of the *Regulation*.

I note the tenants submitted a copy of a mail tracking confirmation indicating that the e-mail sent on January 6, 2022 was read. However, I note the e-mail was sent to two people. I find the mail tracking confirmation does not specify whether the forwarding address e-mail was opened and read by the landlord or by Person V.

I find I am not able to confirm whether the landlord actually received the forwarding address, despite it not being served in accordance with the *Act* and *Regulation*.

Therefore, I dismiss the tenants' application for the return of the security deposit based on the e-mail forwarding address dated January 6, 2022, without leave to reapply.

If the tenants want to apply through the Direct Request process, the tenants may reissue the forwarding address and serve it in one of the ways prescribed by section 88 of the *Act* or, if reissuing the forwarding address by e-mail, provide sufficient evidence to demonstrate that the e-mail service complies with section 43(1) of the *Regulation*.

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

The tenants' application for the return of the security deposit based on the e-mail forwarding address dated January 6, 2022, is dismissed, without leave to reapply.

The tenants' application to recover the filing fee paid for this application 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 08, 2022

Residential Tenancy Branch