



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.

The tenant submitted a blank Proof of Service Tenant's Notice of Direct Request Proceeding form. The tenant also provided a copy of a Canada Post Customer Receipt containing the tracking number to confirm a package was sent to the landlord by Express post mailing on February 17, 2022.

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*?

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the tenant to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such material does not lend itself to ambiguity or give rise to issues that may need clarification beyond the purview of a Direct Request Proceeding. If the tenant cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

In this type of matter, the tenant must prove they served the landlord with the Notice of Dispute Resolution Proceeding - Direct Request and all documents in support of the application as per section 89 of the *Act*. Policy Guideline #49 on Tenant's Direct Request provides the following requirements:

"Once the package is served, the tenant must complete and submit a Proof of Service Tenant's Notice of Direct Request Proceeding (Form RTB-50) which is provided by the Branch with the Notice of Dispute Resolution Proceeding"

I find the tenant submitted a blank copy of a Proof of Service Tenant's Notice of Direct Request Proceeding form. The tenant has not submitted a complete copy of the form, which is a requirement of the Direct Request process as detailed in Policy Guideline #49.

I also note that section 89 of the *Act* permits service "*by sending a copy by registered mail...*" The definition of registered mail is set out in section 1 of the *Act* as "*any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.*" Policy Guideline #12 on Service Provisions goes on to clarify that this "*includes Express post, if the signature option is used.*"

I find that the tracking number provided by the tenant is for a package sent by Canada Post's Express post mailing, which may or may not require a signature from the individual to confirm delivery to the person named as the respondent.

In this case, Canada Post's Online Tracking System shows that a signature was not required for the delivery of this Express post mailing and, as such, it does not meet the definition of registered mail as defined under the *Act*.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding – Direct Request to the landlord in accordance with section 89 of the *Act*.

For this reason, the tenant's application for a Monetary Order for the return of the security deposit is dismissed with 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.

Conclusion

I dismiss the tenant's application for a Monetary Order for the return of the security deposit with 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: March 18, 2022