



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.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the tenant on February 1, 2022.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on March 11, 2022, the tenant sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

Based on the written submissions of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on March 11, 2022 and are deemed to have been received by the landlord on March 16, 2022, the fifth day after their registered mailing.

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*?

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 tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on October 14, 2019, indicating a monthly rent of \$1,490.00 and a security deposit of \$745.00, for a tenancy commencing on November 1, 2019
- A copy of a WhatsApp message from Person S.C. dated January 1, 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 by WhatsApp at 3:06 pm on January 1, 2022
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenant and indicating the tenancy ended on December 31, 2021

Analysis

In this type of matter, the tenant must prove that they served the landlord with the forwarding address in accordance with section 88 of the *Act* or section 43(1) of the *Residential Tenancy Regulation*.

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.

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.

The tenant has indicated that they sent the landlord the forwarding address by WhatsApp message, which is not a method of service as indicated above.

For this reason, I find that the forwarding address has not been served in accordance with the *Act* or the *Regulation*.

I also find the tenant has not submitted a copy of a reply message from the landlord, or any other evidence, to demonstrate that the landlord received the forwarding address, despite it not being served in accordance with the legislation.

Therefore, I dismiss the tenant's application for the return of the security deposit based on the WhatsApp forwarding address dated January 1, 2022, without leave to reapply.

The tenant must reissue the forwarding address and serve it in one of the ways prescribed by section 88 of the *Act*, section 43(1) of the *Regulation*, or according to Policy Guideline #49, if the tenant wants to apply through the Direct Request process.

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

The tenant's application for the return of the security deposit based on the WhatsApp forwarding address dated January 1, 2022, is dismissed, without 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: April 01, 2022

Residential Tenancy Branch