



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 March 2, 2022.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on March 13, 2022, the tenants sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by e-mail. The tenants provided a copy of the outgoing e-mail containing the Direct Request documents as attachments to confirm this service. The tenants also submitted a copy of an Address for Service form which was signed by the landlord on January 19, 2022, indicating the landlord agreed to send and receive documents by e-mail.

Based on the written submissions of the tenants and in accordance with sections 43(2) and 44 of the *Residential Tenancy Regulations*, I find that the Direct Request Proceeding documents were served on March 13, 2022 and are deemed to have been received by the landlord on March 16, 2022, the third day after their e-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 tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and one of the tenants on May 20, 2019, indicating a monthly rent of \$2,000.00 and a security deposit of \$1,000.00, for a tenancy commencing on June 15, 2019
- A copy of a letter from the tenant to the landlord dated December 14, 2021, 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 e-mail at 10:47 am on December 14, 2021
- 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 December 1, 2021

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.*"

The tenants have indicated they sent the forwarding address to the landlord by e-mail on December 14, 2021. The tenants submitted a copy of an Address for Service form which was signed by the landlord, indicating the landlord agreed to receive documents by e-mail. However, I find the Address for Service form was not signed until January 19, 2022, after the forwarding address was sent by e-mail.

I find that, at the time the forwarding address was e-mailed, the landlord had not yet consented to receiving documents by e-mail.

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

Therefore, I dismiss the tenants' application for the return of the security deposit based on the forwarding address e-mailed on December 14, 2021, 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 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 forwarding address e-mailed on December 14, 2021, 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: April 01, 2022

Residential Tenancy Branch