



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 double 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 April 1, 2022.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on April 9, 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 April 9, 2022 and are deemed to have been received by the landlord on April 14, 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 tenant on December 27, 2020, indicating a monthly rent of \$850.00 and a security deposit of \$425.00, for a tenancy commencing on January 1, 2021
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the forwarding address) dated March 10, 2022
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was served to the landlord by registered mail, by e-mail, and by attaching to the door of the rental unit at 6:30 pm on March 10, 2022
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the forwarding address was sent to the landlord on March 10, 2022
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenant and indicating the tenant vacated the rental unit on April 1, 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*.

Section 88 of the *Act* allows for service of the forwarding address by:

- sending it by mail to an address where the landlord resides or carries on business as a landlord
- leaving a copy with the landlord or their agent
- leaving a copy in the landlord's mailbox or mail slot

- attaching a copy to the landlord's door
- leaving a copy with an adult who apparently resides with the landlord
- any other means of service provided for in the regulations

The tenant has indicated that they attached a copy of the forwarding address to the door of the rental unit, and not to the landlord's door. I find that posting to the rental address door is not a method permitted under section 88 of the Act.

For this reason, I cannot consider service of the forwarding address by attaching to the door of the rental unit.

The tenant has also indicated they sent the forwarding address by e-mail. Section 43(1) of the *Residential Tenancy Regulation* provides that documents may e-mailed to an e-mail address provided as an address for service by the person. However, I find there is no evidence to demonstrate that the landlord indicated documents could be served by e-mail.

I find the tenant has 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 cannot consider service of the forwarding address by e-mail.

Finally, the tenant has indicated they sent the forwarding address to the landlord by registered mail. In accordance with sections 88 and 90 of the *Act*, I find that the forwarding address was served on March 10, 2022 and is considered to have been received by the landlord on March 15, 2022, five days after its registered mailing.

Section 38(1) of the *Act* states that within fifteen days of the tenancy ending and the landlord receiving the forwarding address, the landlord may either repay the deposit or make an application for dispute resolution claiming against the deposit.

I find that the fifteenth day for the landlord to have either returned the deposit or filed for dispute resolution was March 30, 2022.

However, section 90 of the *Act* states that a document sent by regular or registered mail is deemed received on the fifth day after it was sent. If the landlord sent the deposit by mail on their last day, the tenant may not have received the deposit until April 4, 2022.

I find that the tenant applied for dispute resolution on April 1, 2022, before they could have known whether the landlord complied with the provisions of section 38(1) of the *Act*, and that the earliest date the tenant could have applied for dispute resolution was April 5, 2022.

I find that the tenant made their application for dispute resolution too early.

Therefore, the tenant's application for a Monetary Order for the return of double 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 double 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: May 05, 2022

Residential Tenancy Branch