



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.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on March 27, 2022, the tenants sent the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to Tenant S.A.

The tenants also provided a copy of a Canada Post Customer Receipt containing a tracking number to confirm a package was sent by registered mail on April 13, 2022.

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*?

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the tenants to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the tenants 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 tenants 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 note that the tenants submitted a copy of a Proof of Service Tenant's Notice of Direct Request Proceeding form indicating that Direct Request documents were sent to Tenant S.A. on March 27, 2022. I find this form does not state that documents were sent to the landlord.

Furthermore, I note that the Notice of Dispute Resolution Proceeding – Direct Request was not made available for service until April 11, 2022, two weeks after the Proof of Service form states the documents were sent.

The tenants did submit a copy of a Canada Post receipt containing a tracking number to confirm a package was sent by registered mail on April 13, 2022. However, I find the tenants have not provided a copy of the Proof of Service Tenant's Notice of Direct Request Proceeding form to confirm the details of the April 13, 2022 mailing.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding – Direct Request to the landlord.

I also note that 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.

In order to submit an application for dispute resolution through the Residential Tenancy Branch, the applicant is required to provide a mailing address for the respondent.

I find the tenants have not submitted a copy of a written, forwarding mailing address provided to the landlord. I find I am not able to determine whether the landlord had the opportunity to comply with section 38(1) of the *Act* by making an application claiming against the deposit.

For these reasons, the tenants' application for a Monetary Order for the return of the security deposit is dismissed with leave to reapply.

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

I dismiss the tenants' application for a Monetary Order for the return of the security deposit with leave to reapply.

I dismiss the tenants' 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 16, 2022

Residential Tenancy Branch