



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 March 30, 2022.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on April 1, 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 1, 2022 and are deemed to have been received by the landlord on April 6, 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 partial copy of a residential tenancy agreement which was signed by the landlord and the tenant on June 18, 2019, indicating a security deposit of \$600.00
- A copy of a text message dated January 30, 2022 providing the tenant's forwarding address
- A copy of a letter from the tenant to the landlord dated March 10, 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 registered mail 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 tenancy ended on January 31, 2022

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 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 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.

Section 59 of the *Act* establishes that an Application for Dispute Resolution must “include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings.”

Policy Guideline #49 on Tenant’s Direct Request requires the applicant to provide a copy of the signed tenancy agreement.

I find that the tenant has only submitted four pages of the eight-page tenancy agreement. I further find that I am not able to consider the tenant's Application for Dispute Resolution without the complete tenancy agreement, which is a requirement of the Direct Request Process.

I also note that, 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 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.

The tenant submitted a copy of a text message containing the forwarding address. I find that text message is not a method of service as indicated above and for this reason, I cannot consider the text forwarding address.

The tenant also submitted a copy of a letter containing the forwarding address. 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, 2021, 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 March 30, 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.

For these reasons, 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: May 02, 2022

Residential Tenancy Branch