



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Preliminary Matters

I note that the Application for Dispute Resolution submitted by the tenants lists two identical landlords as respondents. Section 64(3)(c) of the *Act* allows me to amend the application to remove the duplicate landlord, which I have done.

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 and the pet damage deposit (the deposits) 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 May 15, 2022.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on June 3, 2022, the tenants sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenants provided a copy of the Canada Post receipt containing the tracking number to confirm this mailing.

Based on the written submissions of the tenants and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on June 3, 2022 and are deemed to have been received by the landlord on June 8, 2022, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation for the return of a security deposit and a pet damage 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 tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on February 11, 2021, indicating a monthly rent of \$3,695.00 and a combined total for the deposits of \$3,695.00, for a tenancy commencing on February 28, 2021
- A copy of an e-mail sent from the tenants to the landlord on March 25, 2022, providing the forwarding address for the return of the deposits
- A copy of an e-mail from the landlord dated April 15, 2022, requesting the tenants confirm the mailing address for the deposits
- 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 at 4:01 pm on April 17, 2022
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm a package was sent to the landlord on April 17, 2022
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposits paid by the tenants and indicating the tenancy ended on February 28, 2022

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 material does not lend itself to ambiguity or give rise to issues that may need 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.

I have reviewed all documentary evidence and I find that the name of one of the applicants (Person M.S.) does not match the name listed on the tenancy agreement (Person M.H.).

I also note that, 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 88 of the *Act* provides that a forwarding address 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 sent the forwarding address by e-mail. However, I find there is no evidence to demonstrate that the landlord indicated documents could be served by e-mail. The tenants submitted a copy of an e-mail from the landlord; however, I find this e-mail specifically requests the tenants confirm the mailing address.

I find I am not able to confirm whether the landlord was properly served the forwarding address by e-mail.

The tenants also state they sent the landlord the forwarding address by registered mail on April 17, 2022. However, the tenants have not submitted a copy of the forwarding address letter or form that was sent by registered mail.

I find I am not able to confirm whether the landlord was properly served a valid and complete forwarding address by registered mail.

I find I am not able to confirm the correct legal names of the applicants. I also find I am not able to confirm service of the forwarding address to the landlord. For these reasons, the tenants’ application for a Monetary Order for the return of the security deposit and the pet damage 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 and the pet damage 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: June 24, 2022

Residential Tenancy Branch