



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-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 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 July 27, 2022.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on July 29, 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 Customer Receipt containing the tracking number to confirm this 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 28, 2021, indicating a monthly rent of \$3,000.00, a

security deposit of \$1,500.00, and a pet damage deposit of \$1,500.00, for a tenancy commencing on April 1, 2021

- A copy of a letter from the tenants to the landlord, providing the forwarding address for the return of 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 on March 29, 2022
- A copy of an envelope containing the Canada Post tracking number to confirm the forwarding address was sent to the landlord on March 29, 2022
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposits paid by the tenants, and indicating the tenants vacated the rental property on September 30, 2021

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 that they served the landlord with the forwarding address in a manner that is considered necessary as per sections 71(2)(a) and 88 of the *Act*.

The tenants provided a copy of the envelope showing that the forwarding address letter was returned to sender with an indication that the landlord had moved.

The tenants state that the neighbor indicated the landlord still resides at the address. However, I find the tenants have not submitted any evidence, such as a witness statement, to confirm the landlord still resides at address where the forwarding address was sent.

The Residential Tenancy Branch website provides that "*A person can't avoid service by refusing to accept registered mail. Where registered mail is refused or deliberately not picked up, service is considered to be on the fifth day after mailing.*"

I find this deeming provision can only be applied if the registered mail was sent to the correct address. I find I am not able to confirm whether the forwarding address was sent to an address where the landlord resides.

I further find I am not able to confirm whether the landlord had the opportunity to accept the registered mail. I cannot determine whether the registered mail was deliberately refused or whether the forwarding address was sent to an outdated address.

I find I am not able to confirm service of the forwarding address to the landlord, which is a requirement of the Direct Request Proceeding.

For this reason, 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

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.

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: August 26, 2022

Residential Tenancy Branch