



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

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).

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on July 14, 2022, the tenant sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by e-mail. The tenant provided a copy of the outgoing e-mail containing the Direct Request documents as attachments to confirm this service.

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*?

Analysis

In this type of matter, the tenant 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*.

Section 89 of the *Act* provides that a Notice of Dispute Resolution Proceeding - Direct Request may be served "*by any other means of service provided for in the regulations.*"

On March 1, 2021, section 43(2) of the *Residential Tenancy Regulation* was updated to provide 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.***"

I find that the tenant has sent the Notice of Dispute Resolution Proceeding - Direct Request by e-mail.

The tenant submitted a copy of a tenancy agreement containing a clause that the tenant agreed to receive documents from the landlord by e-mail. However, I find this

agreement does not indicate whether the landlord also agreed to receive documents from the tenant by e-mail.

Furthermore, I find the tenancy agreement has not been signed by the landlord. Finally, the agreement is for a tenancy that began on July 15, 2019, before section 43(2) of the Regulation was implemented.

I find the tenant has not sufficiently demonstrated that the landlord's e-mail address was provided for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation*.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the landlord and for this reason, the tenant's application for a Monetary Order for the return of the security deposit is dismissed with leave to reapply.

Conclusion

I dismiss the tenant's application for a Monetary Order for the return of the security deposit with 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 11, 2022

Residential Tenancy Branch