



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 double 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 July 14, 2022.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on July 15, 2022, the tenant sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The tenant provided a copy of the envelope containing the Canada Post tracking number to confirm this mailing. The tenant also submitted a copy of an e-mail from the landlord indicating that documents could be mailed to the rental unit address.

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 July 15, 2022 and are deemed to have been received by the landlord on July 20, 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 copy of a residential tenancy agreement which was signed by the landlord and the tenant on October 25, 2019, indicating a monthly rent of \$1,900.00, a security deposit of \$900.00, and a FOB deposit of \$50.00, for a tenancy commencing on November 15, 2019
- A copy of an e-mail dated May 4, 2022, giving notice to end the tenancy effective June 1, 2022
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form which indicates that a forwarding address was sent to the landlord by e-mail at 9:32 pm on May 4, 2022
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the forwarding address form) dated July 14, 2022
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit(s) paid by the tenant and indicating the tenancy ended on June 1, 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 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(s) or make an application for dispute resolution claiming against the deposit(s).

The tenant has indicated they provided a forwarding address to the landlord on May 4, 2022. The tenant submitted a copy of an e-mail dated May 4, 2022, giving notice to end the tenancy. However, I find this e-mail does not include a forwarding mailing address for the tenant.

I find I am not able to confirm service of an e-mailed forwarding address to the landlord.

The tenant has also submitted a copy of a forwarding address form dated July 14, 2022. However, I find the tenant has not submitted a copy of a Proof of Service of Forwarding Address form or any other evidence to demonstrate that the forwarding address form of July 14, 2022, was served to the landlord.

I find I am not able to confirm service of the forwarding address form to the landlord.

Furthermore, I note the tenant applied for dispute resolution on July 14, 2022, the same day the forwarding address form was completed, and that the tenant did not allow fifteen days for the landlord to either return the deposit or file for dispute, in accordance with section 38(1) of the *Act*.

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: August 09, 2022

Residential Tenancy Branch