



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 July 13, 2022.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on July 28, 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 July 28, 2022 and are deemed to have been received by the landlord on August 2, 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, indicating a monthly rent of \$1,600.00 and a security deposit of \$800.00, for a tenancy commencing on October 1, 2021
- A copy of an e-mail sent to the landlord providing the tenant's forwarding address (the e-mail forwarding address) and a copy of a reply e-mail from the landlord
- 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 May 1, 2022
- A copy of a witnessed Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit which indicates that the forwarding address form was placed in the landlord's mail slot at 2:00 pm on July 13, 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 March 31, 2022

Analysis

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 deposits or make an application for dispute resolution claiming against the deposits.

In accordance with sections 88 and 90 of the *Act*, I find that the forwarding address form was served on July 13, 2022 and is considered to have been received by the landlord on July 16, 2022, three days after it was placed in the mail slot.

I find that the tenant applied for dispute resolution on July 13, 2022, before the landlord's fifteen days to comply with the provisions of section 38(1) of the *Act*.

I find that the tenant made their application, based on the forwarding address form, too early.

The tenant also submitted a copy of an e-mails exchanged with the landlord, providing a forwarding address. However, I find the outgoing e-mail does not indicate on what day the e-mail was sent. I also find there is no date indicated on the reply e-mail to confirm when the landlord responded to the tenant's e-mail.

I find I am not able to determine when the landlord received the e-mail forwarding address. I further find I cannot confirm whether the landlord was provided fifteen days to either return the deposit or make an application claiming against it.

I find I am not able to determine whether the tenant made their application, based on the e-mail forwarding address, 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: August 25, 2022

Residential Tenancy Branch