



Dispute Resolution Services

Page: 1

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 tenants 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 tenants on August 5, 2022.

The tenants submitted one signed Proof of Service Tenant's Notice of Direct Request Proceeding which declare that on August 23, 2022, the tenants sent the landlords the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenants provided a copy of the Canada Post receipt containing two tracking numbers to confirm these mailings.

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 August 23, 2022 and are deemed to have been received by the landlords on August 28, 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 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 landlords' agent and the tenants on October 26, 2020, indicating a monthly rent of \$1,800.00 and a security deposit of \$900.00, for a tenancy commencing on November 1, 2020
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the forwarding address) dated January 2, 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 the forwarding address was sent to the landlord by registered mail and by e-mail at 12:00 pm on January 2, 2022
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenants and indicating the tenants vacated the rental unit on December 31, 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 landlords with the forwarding address in a manner that is considered necessary as per sections 71(2) (a) and 88 of the *Act*. Policy Guideline # 49 contains the details about the key elements that need to be considered when making an application for Direct Request.

Proof of service of the forwarding address may take the form of:

- **registered mail receipt and printed tracking report**
- a receipt signed by the landlord, stating they took hand delivery of the document(s)
- a witness statement that they saw the tenant deliver the document(s)
- **a copy of the outgoing e-mail containing the forwarding address**

The tenants have indicated they sent the forwarding address by registered mail and by e-mail. However, I find the tenants have not submitted a copy of the Canada Post registered mail receipt or the outgoing e-mail to confirm service of the forwarding address to the landlords.

I find I am not able to confirm service of the forwarding address to the landlords, 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 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 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: September 20, 2022

Residential Tenancy Branch