



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 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 August 4, 2022.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on August 22, 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 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 August 22, 2022 and are deemed to have been received by the landlord on August 27, 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 \$6,000.00 and a security deposit of \$6,000.00, for a tenancy commencing on March 1, 2020
- A copy of an e-mail from the tenant to the landlord dated March 1, 2022, providing the forwarding address and requesting the return of the deposit
- 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 e-mail at 11:15 pm on March 1, 2022
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenant, a full reimbursement of \$6,000.00 made on March 28, 2022, and indicating the tenancy ended on March 1, 2022

Analysis

In this type of matter, the tenant must prove that they served the landlord with the forwarding address in accordance with section 88 of the *Act*. Section 88 of the *Act* provides that a forwarding address may be served "*by any other means of service provided for in the regulations.*"

Section 43(1) of the *Residential Tenancy Regulation* provides 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 forwarding address by e-mail. However, I find there is no evidence to demonstrate that the landlord indicated documents could be served by e-mail. I find the tenant has not demonstrated that the landlord's e-mail address was provided for service of documents, as required by section 43(1) of the *Residential Tenancy Regulation*.

The tenant states that they have a confirmation the landlord received the forwarding address. However, I find the tenant has not submitted a copy of a reply e-mail or any other proof, such as a "read receipt" to confirm the landlord received the e-mail forwarding address.

For this reason, I find I am not able to confirm whether the landlord was served the forwarding address.

I also note that the purpose of the Direct Request is to obtain the return of the security deposit. If the deposit has not been returned, the tenant may be entitled to a Monetary Order for the return of the deposit and the associated doubling provision. The Direct

Request is not a means to solely obtain compensation for the landlord's inaction within the fifteen-day timeline.

In their application, the tenant has indicated the deposit was returned to the tenant. I find the tenant is only seeking compensation for the delay in the reimbursement. The tenant is not seeking the return of the security deposit itself.

I find that a request for compensation only cannot proceed through the Direct Request process and must be dealt with through a participatory hearing.

For these reasons, I dismiss the tenant's application for the doubling of the security deposit with leave to reapply through a participatory hearing.

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 doubling of the security deposit, with leave to reapply through the participatory process.

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: September 20, 2022

Residential Tenancy Branch