



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-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 and the pet damage deposit (the deposits) 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 12, 2022.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declare that on September 2, 2022, the tenants sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenants provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

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 September 2, 2022 and are deemed to have been received by the landlord on September 7, 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 and a pet damage 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 Tenant A.S. on April 19, 2018, indicating a monthly rent of \$4,368.00, a security deposit of \$2,000.00, and a pet damage deposit of \$300.00, for a tenancy commencing on April 1, 2018
- 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 11:48 am on July 16, 2022
- A copy of an e-mail from the tenants to the landlord dated July 16, 2022, providing the forwarding address, and requesting the return of the deposits
- A copy of an e-mail reply from the landlord dated August 11, 2022, discussing the deductions from the deposits
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposits paid by the tenants and indicating the tenancy ended on June 30, 2022

Analysis

In this type of matter, the tenants 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 tenants sent their forwarding address to the landlord by e-mail. However, I find there is no evidence to demonstrate that the landlord indicated documents could be served by e-mail.

Section 71(2)(c) of the *Act* enables me to make an order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

I find the tenants have not demonstrated that the forwarding address was served in accordance with the *Act* and the *Regulation*. However, I am satisfied that the landlord received forwarding address on the day the landlord replied to the tenants' e-mail.

For this reason, and in accordance with section 71(2)(c) of the *Act*, I find that the landlord has been served with the forwarding address on August 11, 2022.

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.

I find that the fifteenth day for the landlord to have either returned the deposits or filed for dispute resolution was August 26, 2022.

I further find that the tenants applied for dispute resolution on August 12, 2022, before the landlord's last day to comply with the provisions of section 38(1) of the *Act*.

I find that the tenants made their application for dispute resolution too early.

Therefore, the tenants' application for a Monetary Order for the return of double the security deposit and the pet damage 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 double the security deposit and the pet damage 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: October 03, 2022

Residential Tenancy Branch