

DECISION

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 the tenants' Application for Dispute Resolution (Application) for:

- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit pursuant to sections 38 and 67 of the Act (\$5,000.00)
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the Act (\$100.00)

Service of Notice of Dispute Resolution Proceeding - Direct Request

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that the respondent was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package). The tenants provided a copy of an envelope and a Canada Post receipt containing a tracking number to confirm a package was sent to the respondent by registered mail on October 21, 2022.

Issue(s) to be decided

Are the tenants entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit? (\$5,000.00)

Are the tenants entitled to recover the filing fee for this application from the landlord? (\$100.00)

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 evidentiary material:

- A copy of a residential tenancy agreement which names a landlord who is not the respondent and was signed by one of the tenants on May 7, 2020, indicating a monthly rent of \$2,700.00, a security deposit of \$1,250.00, and a pet damage deposit of \$1,250.00, for a tenancy commencing on June 1, 2020;
- A copy of an e-mail from the tenants to the respondent dated August 15, 2022, providing the tenants' forwarding address;
- 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 respondent by e-mail at 4:42 pm on August 26, 2022;
- 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 August 31, 2022.

Analysis

Are the tenants entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?

Section 38(1) of the Act stipulates that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

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.*”

The tenants state they sent the forwarding address by e-mail. However, I find there is no evidence to demonstrate that the respondent indicated documents could be served by e-mail.

I find the tenants have not demonstrated that the respondent's e-mail address was provided specifically for service of documents, as required by section 43(1) of the *Residential Tenancy Regulation*.

For this reason, I find that the forwarding address has not been served in accordance with the Act and the Regulation.

Therefore, I dismiss the tenants' application for the return of the security deposit based on the forwarding address dated August 15, 2022, without leave to reapply.

If the tenants want to apply through the Direct Request process, the tenants may reissue the forwarding address and serve it in one of the ways prescribed by section 88 of the Act or, if reissuing the forwarding address by e-mail, provide sufficient evidence to demonstrate that the e-mail service complies with section 43(1) of the Regulation.

Are the tenants entitled to recover the filing fee for this application from the landlord?

As the tenants were not successful in this application, I find the tenants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The tenants' application for a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit, based on the e-mail forwarding address dated August 15, 2022, is dismissed, without leave to reapply.

The tenants' application for authorization to recover the filing fee for this application from the landlord is dismissed, 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: November 25, 2022

Residential Tenancy Branch