

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 pursuant to sections 38 and 67 of the Act (\$900.00)
- 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 landlord was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) in accordance with section 89 of the Act. The applicants provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service. Based on the written submissions of the tenant and in accordance with section 90 of the Act:

- I find that Landlord S.S. was served on October 5, 2022, by registered mail, and is deemed to have received the Proceeding Package on October 10, 2022, the fifth day after the registered mailing.

Issue(s) to be decided

Are the tenants entitled to a Monetary Order for the return of all or a portion of their security deposit? (\$900.00)

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 was signed by the landlord and one of the tenants on February 3, 2022, indicating a monthly rent of \$1,820.00, and a security deposit of \$900.00, for a tenancy commencing on February 18, 2022;
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the forwarding address) dated September 19, 2022;
- A copy of a Proof of Service Tenant's Forwarding Address for Return of security deposit and/or pet damage deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was sent to the landlord by e-mail at 3:43 pm on August 4, 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 August 1, 2022.

Analysis

In this type of matter, the tenants must prove they served the landlord with the forwarding address as per section 88 of the *Act*. Policy Guideline #49 on Tenant's Direct Request provides that service of the forwarding address by e-mail may be proven by providing:

- **A copy of the outgoing email** showing the email address used, the date the email was sent, and any attachments included in the email and
- The RTB-51 - Address for Service or other document that sets out the party's email address for service

The tenants have stated they sent the forwarding address to the landlord by e-mail and that the landlord replied to the e-mail.

I find the tenants have not submitted a copy of the outgoing e-mail showing the forwarding address included as an attachment or in the body of the e-mail. The tenants have also not submitted a copy of the landlord's reply confirming they received the tenants' e-mail.

I find I am not able to confirm service of the forwarding address to the landlord and 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 the tenants are not entitled to recover the filing fee paid for this application.

Conclusion

The tenants' Application for a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the Act, is dismissed with leave to reapply.

The tenants' Application for authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the Act 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 8, 2022

Residential Tenancy Branch