

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 tenant's 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 (\$1,250.00)
- 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 tenant 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) by registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

Issue(s) to be decided

Is the tenant entitled to a Monetary Order for the return of all or a portion of their security deposit? (\$1,250.00)

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

Analysis

In this type of matter, the tenant must prove they served the landlord with the Notice of Dispute Resolution Proceeding - Direct Request and all documents in support of the application as indicated on the Notice as per section 89 of the Act which permits service "*by sending a copy by registered mail...*"

The definition of registered mail is set out in section 1 of the Act as "*any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person*"

is available.” Policy Guideline #12 on Service Provisions goes on to clarify that this “includes Express post, if the signature option is used.”

I find that the tracking number provided by the tenant with the Proof of Service Tenant’s Notice of Direct Request Proceeding is for a package sent by Canada Post’s Express post mailing, which may or may not require a signature from the individual to confirm delivery to the person named as the respondent.

In this case, Canada Post’s online tracking system shows that a signature was not required for the delivery of this Express post mailing and, as such, it does not meet the definition of registered mail as defined under the Act.

I find that the tenant has not served the landlord with notice of this application in accordance with section 89 of the Act, and for this reason, I dismiss the tenant’s application for a Monetary Order for the return of the security deposit with leave to reapply.

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

The tenant’s 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, is dismissed with leave to reapply.

The tenant’s 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 16, 2022

Residential Tenancy Branch