

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 (\$750.00)
- 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 one signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that the landlords were served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) by registered mail.

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? (\$750.00)

Is the tenant 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 tenant submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by one of the landlords and the tenant on July 8, 2022, indicating a monthly rent of \$1,500.00, a security deposit of \$750.00, and a pet damage deposit of \$300.00, for a tenancy commencing on August 1, 2022;
- A copy of a letter from the tenant to the landlords dated September 30, 2022, providing the tenant's 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 (Proof of Service of the Forwarding Address) which indicates that the forwarding address was sent to the landlords by e-mail, by text message, and by WhatsApp on September 30, 2022;
- A copy of an outgoing e-mail the forwarding address as an attachment to confirm this service;
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposits paid by the tenant and indicating the tenancy ended on July 15, 2022.

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the tenant to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the tenant cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

In this type of matter, the tenant must prove they served the landlords with the Notice of Dispute Resolution Proceeding - Direct Request and all documents in support of the application as per section 89 of the Act.

On the Proof of Service Tenant's Notice of Direct Request Proceeding, the tenant has indicated they sent the Proceeding Package to the landlord by registered mail. The tenant submitted a copy of a payment receipt; however, I find that the tenant has not provided a copy of the Canada Post Customer Receipt containing the tracking numbers to confirm these mailings.

The tenant has also submitted a copy of an e-mail sent to Landlord S.G. However, the tenant has not included this service method on the Proof of Service Tenant's Notice of Direct Request Proceeding form.

Furthermore, section 89 of the Act provides that a Notice of Dispute Resolution Proceeding - Direct Request may be served “*by any other means of service provided for in the regulations.*” Section 43 of the *Residential Tenancy Regulation* (the 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 the tenant has not submitted any evidence to demonstrate that the landlord’s e-mail address was provided for service of documents, as required by the *Residential Tenancy Regulation*.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the landlords, which is a requirement of the Direct Request process. However, I find there is a more impactful issue with the tenant’s application.

The tenant must prove that they served the landlords with the forwarding address in accordance with section 88 of the Act, which permits service by mail, by leaving a copy with the landlord or their agent, by leaving a copy in the landlord’s mailbox or mail slot, or by attaching a copy to the landlord’s door.

The tenant has indicated they sent the forwarding address to the landlords by text message and through WhatsApp, which are not methods of service permitted under the Act.

Section 88 of the Act also provides that a forwarding address may be served “*by any other means of service provided for in the regulations.*”

The tenant submitted a copy of a tenancy agreement listing an e-mail address for Landlord S.G. However, I find the agreement does not indicate that documents can be served by e-mail.

In fact, the agreement specifically separates the address for service section from the general contact information section where the e-mail address appears.

I find the tenant has not demonstrated that the landlords’ e-mail address was provided specifically for service of documents, as required by the *Residential Tenancy Regulation*.

For these reasons, I find that the forwarding address has not been served in accordance with section 88 of the Act and section 43 of the Regulation.

Therefore, I dismiss the tenant's application for the return of the security deposit based on the forwarding address dated September 30, 2022, without leave to reapply.

If the tenant wants to apply through the Direct Request process, the tenant 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.

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, based on the forwarding address dated September 30, 2022, is dismissed, without leave to reapply.

The tenant's application for authorization to recover the filing fee for this application from the landlords 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: December 13, 2022

Residential Tenancy Branch