

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 (\$1,775.00)
- 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) by e-mail. The tenants submitted a copy of an e-mail containing a Google Docs link to confirm this service. The tenants also submitted a page from the tenancy agreement listing the landlord's e-mail address as a method of contact.

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? (\$1,775.00)

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

Analysis

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

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(2) 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 Notice of Dispute Resolution Proceeding - Direct Request to the landlord by e-mail. The tenants submitted a page from the tenancy agreement listing the landlord’s e-mail address as part of the landlord’s contact information.

However, I find the agreement does not indicate that documents can be served by e-mail. In fact, the agreement separates the official address for service section from simply the contact information section.

I find the tenants have not demonstrated that the landlord’s e-mail address was provided specifically for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation*.

Furthermore, I note that the tenants did not provide a copy of all the Direct Request documents as attachments in the e-mail. Instead, the tenants sent the landlord a link to Google Docs.

Even if the landlord had agreed to receive documents by e-mail, I find that providing a link to where the documents can be found is not the same as e-mailing the landlord a copy of the actual files.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the landlord in accordance with the Act and the Regulation.

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 all or a portion of their 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, 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: December 7, 2022

Residential Tenancy Branch