



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes MNSDS-DR

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 an Application for Dispute Resolution by the tenant for a Monetary Order for the return of the security deposit (the deposit).

The tenant submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on May 1, 2020, the tenant sent each of the landlords the Notice of Direct Request Proceeding by registered mail. The tenant provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?

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 relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by Landlord V.P. and the tenant on October 16, 2019, indicating a monthly rent of \$1,325.00 and a security deposit of \$662.50, for a tenancy commencing on November 1, 2019;
- A copy of a notice to vacate which was signed by the tenant on February 29, 2020, indicating the tenancy would end as of March 31, 2020;
- A copy of a letter from the tenant to the landlords dated March 28, 2020, providing the forwarding address and requesting the return of the deposit;

- A copy of a witnessed 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 personally served to the landlords at 1:00 pm on March 31, 2020; and
- A copy of a Tenant's Monetary Order Worksheet for an Expedited Return of Security Deposit and/or Pet Damage Deposit (the Monetary Order Worksheet). showing the amount of deposit paid by the tenant and indicating that the tenant vacated the rental unit on March 31, 2020.

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.

Section 36(1) of the *Act* states that the tenant's right to the deposit is extinguished if the landlord has provided at least two opportunities to conduct a move-out inspection and the tenant did not participate on either occasion.

On the Monetary Order Worksheet, the tenant has indicated that the landlords have provided one opportunity to conduct the move-out inspection but that the tenant did not participate as it was not a mutually agreed upon time.

I find I am not able to determine if the landlords extinguished their right to the deposit by not providing a second opportunity to inspect the unit, or if the tenant extinguished their right to the deposit by not participating in the move-out inspection.

As the Direct Request process does not allow for clarification of the facts, I find that a participatory hearing is necessary to address this issue.

Conclusion

I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing to be conducted by an arbitrator appointed under the *Act* is required in order to determine the details of the tenant's application.

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon each of the landlord within three (3) days of receiving this decision in accordance with section 89 of the *Act*.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at <http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/information-sheets/rtb114.pdf> that explain evidence and service requirements.

For more information see our website at: gov.bc.ca/landlordtenant. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020

Victoria: 250-387-1602

Elsewhere in BC: 1-800-665-8779

This interim 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: May 04, 2020

Residential Tenancy Branch