



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes MNSDS-DR, FFT

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 tenants for a Monetary Order seeking the return of their security deposit.

The tenants submitted a signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form which declares that on April 30, 2020 the tenants served the above-named landlord with the Notice of Direct Request Proceeding documents, along with copies of supporting documents, by way of email. The tenants provided a copy of the April 30, 2020 email message addressed to landlord, which included eight attachments which reference file names matching the documents the tenants submitted to file. The tenants also provided a copy of an undated reply email from the landlord.

On March 30, 2020, the Executive Director of the Residential Tenancy Branch (“RTB”) authorized a *Director’s Order* which, pursuant to sections 71(2)(b) and (c) of the *Residential Tenancy Act*, orders that until the declaration of the state of emergency made under the *Emergency Program Act* on March 18, 2020 is cancelled or expires without being extended:

a document of the type described in section 88 or 89 of the Residential Tenancy Act has been sufficiently given or served for the purposes of the Act if the document is given or served on the person in one of the following ways:

- *the document is emailed to the email address of the person to whom the document is to be given or served, and that person confirms receipt of the document by way of return email in which case the document is deemed to have been received on the date the person confirms receipt;*

- *the document is emailed to the email address of the person to whom the document is to be given or served, and that person responds to the email without identifying an issue with the transmission or viewing of the document, or with their understanding of the document, in which case the document is deemed to have been received on the date the person responds; or*
- *the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed*

Based on the written submissions of the tenants, and pursuant to the above-noted *Director's Order*, and pursuant to sections 71(2)(b) and (c) of the Act, I find that the landlord is deemed to have received the the Direct Request Proceeding documents on May 03, 2020, three days after they were sent to the landlord by the tenants by way of email.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of all or a portion of their security deposit pursuant to section 38 of the Act? If so, should it be doubled?

Are the tenants entitled to recover the filing fee for this application from the landlord pursuant to section 72 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.

On the tenants' Application for Dispute Resolution by Direct Request (the "application"), the tenants have requested a Monetary Order seeking a return of their security deposit in the amount of \$1,770.00, which represents double the amount of the security deposit provided at the beginning of the tenancy, in the amount of \$885.00.

As part of their evidentiary package, the tenants provided a copy of a condition inspection report which includes columns titled "arriving condition" and "leaving condition" respectively.

On the application, the tenants asserted that they participated in a condition inspection at the start and end of the tenancy, and that a condition inspection report was completed by the landlord. The tenants stated that they provide their forwarding

address to the landlord's agent, the building manager, during the condition inspection at the end of the tenancy, and that the building manager wrote the forwarding address on the condition inspection report. The outgoing inspection on the condition inspection report is dated January 30, 2020 and includes a signature for the landlord's agent and a signature for the tenant "JM".

The "leaving column" of the condition inspection report includes total monetary charges calculated against the tenants in the amount of \$2,295.00. The condition inspection report also includes a statement which depicts that the tenants agree that the landlord may deduct \$2,295.00 from the security deposit. Beneath that section, the tenant JM and the landlord's agent have provided their respective signatures and dated the document as January 30, 2020.

The tenants also provided 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) on which the tenants provided that they did not authorize any deductions from their security deposit.

Analysis

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the landlord to participate, there is a much higher burden placed on tenant in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the tenant must prove they served the landlord with the Notice of Direct Request Proceeding, the forwarding address, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. 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 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.

The Direct Request process is a mechanism that allows a tenant to apply for an expedited decision, and as such, the tenant must follow and submit documentation exactly as prescribed by the *Act* and Policy Guideline #49 – Tenant's Direct Request. There can be no omissions or deficiencies with items being left open to interpretation or inference.

The information provided on the condition inspection report brings into question whether it remains open to the tenants to seek the return of their security deposit by way of a Direct Request Proceeding. The condition inspection report includes a written statement which depicts that the tenants agreed that the landlord may deduct \$2,295.00 from the security deposit. The tenant JM appears to have endorsed the terms and statements provided on the condition inspection report by signing the document.

However, on the Monetary Order Worksheet, the tenants indicate that they did not authorize any deductions from their security deposit. There appears to be contradictory information presented on the Monetary Order Worksheet and condition inspection report with respect to whether the tenants authorized the landlord to retain the security deposit as payment toward charges purportedly owed to the landlord which exceed the amount of the security deposit.

I find that there are inconsistencies with the tenants' application arising from contradictory information provided on the documentary evidence submitted by the tenants, as outlined above. I find that I cannot make a determination on the issues identified above within the narrow scope of the Direct Request process.

The questions raised by the contradictory information cannot be remedied by inferences in the absence of more evidentiary material, or sworn testimony from the parties, which may clarify the questions raised by these inconsistencies. Due to the limited scope of the Direct Request process, I am unable to make a determination on these issues and find that a participatory hearing is the appropriate venue to allow for the clarification of these issues and to hear the tenants' request for a monetary order seeking the return of their security deposit.

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 tenants' application.

Notices of Reconvened Hearing are enclosed with this interim decision for the applicant to serve, with all other required documents, upon 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. 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
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