



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 to obtain monetary compensation for the return of double the security deposit (the deposit) and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the tenants on June 10, 2022.

The tenants submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on June 13, 2022, the tenants sent the landlords the Notice of Dispute Resolution Proceeding - Direct Request by e-mail. The tenants provided a copy of an outgoing e-mail containing the Direct Request documents as attachments to confirm this service.

Issue(s) to be Decided

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

Are the tenants entitled to recover the filing fee for this application 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.

The tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and two of the tenants on September 2, 2021, indicating a monthly rent of

\$1,800.00 and a security deposit of \$900.00, for a tenancy commencing on September 1, 2021

- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form which indicates that the forwarding addresses were provided to the landlords on the Condition Inspection Report at 2:00 pm on April 30, 2022
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenants and indicating the tenants vacated the rental property on April 30, 2022

Analysis

In this type of matter, the tenants 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*.

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.***"

I find that the tenants have sent the Notice of Dispute Resolution Proceeding - Direct Request to the landlords by e-mail. The tenants submitted a copy of an Address for Service form; however, I find this form has not been signed by either landlord.

I also note that the tenancy agreement provides an e-mail address as part of the landlords' contact information. However, there is no indication in the agreement that this e-mail address can be used specifically for service of documents.

I find the tenants have not demonstrated that the landlord's e-mail address was provided for service of documents, as required by section 43(2) of 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 in accordance with the legislation.

I also note that Policy Guideline #49 on Tenants Direct Request requires the applicant to provide a copy of the forwarding address served to the landlords.

The tenants have indicated that they provided the forwarding addresses on the move-out Condition Inspection Report; however, the tenants have not provided a copy of the report showing the forwarding addresses provided to the landlords.

I note the tenants claim the landlord did not provide the tenants a copy of the Condition Inspection Report. However, the tenants have also not submitted a copy of a photograph taken of the report or any follow up document containing the forwarding addresses.

I find I am not able to confirm service of complete and valid forwarding addresses to the landlords in accordance with the legislation.

For these reasons, 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

I dismiss the tenants' application for a Monetary Order for the return of the security deposit with leave to reapply.

I dismiss the tenants' application to recover the filing fee paid for this application 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: July 15, 2022

Residential Tenancy Branch