



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: RR MNDC FF

### **Introduction**

Both parties attended the hearing and gave sworn testimony. The tenant provided evidence that they had served the landlord with the Application for Dispute Resolution by registered mail and the landlord confirmed receipt. The landlord agreed she had received them as stated. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The landlord had served a Two Month Notice to End Tenancy for landlord's use of the property and the tenant then gave the landlord a 10 Day Notice by email to say they were vacating. The tenants apply pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to refund the balance of the rent pursuant to sections 49, 50 and 51 as the tenant ended the tenancy early after receiving a Notice under section 49; and
- b) To recover the filing fee for this application.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that they are entitled to a refund of rent pursuant to section 50 and to recover their filing fee?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. It was undisputed that the tenancy began October 2015, rent was \$1500 a month and a security and pet deposit was paid of \$1200. The tenant said after they got the Two Month Notice to End Tenancy dated July 30, 2016 to be effective October 1, 2016, they served a 10 Day Notice to End Tenancy by email on September 4, 2016 to be effective September 14, 2016. They did not get a refund of the balance of their September rent and are claiming \$800.

The landlord said that email is not legal service for the tenants' Notice to End Tenancy. She also said it was not in the right format for it did not say that they were vacating on September 14, 2016. There was no date. The tenant disagreed. He said email is an established method of communication between the parties and he has a legal opinion that email is a valid method of service. The landlord said she took a firm position on this for the tenants insisted during the tenancy that they be legally served with all the correct forms under the Act.

In evidence is the tenant statement, the two month Notice to End Tenancy, a monetary request and registered mail. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

The Residential Tenancy Act in section 88 and 89 sets out the legal methods of service for residential tenancies. As explained to the tenant in the hearing, email may be an acceptable means of service for some situations but the Act deals specifically with acceptable methods of service for landlords and tenants and this would over ride general case law. I find email is not a legal method of service under the Act. The methods permitted for service of documents generally are set out in sections 88 and 89 of the Act. The Residential Policy Guidelines discuss these in Guideline 12 but I find email is not an included legal method of service. The Guideline explains:

The current Regulation to the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* do not prescribe any other means of service.

A tenant must give a landlord written notice to end their tenancy – both parties should keep a copy. The notice needs to include the:

- Tenant's name
- Date
- Address of the rental unit
- Date the tenant plans to leave
- Tenant's signature

Furthermore, although the tenant invited me to look at the emails, I find they did not conform to the legal requirements for Notices set out above. Although the tenant contended that email was the usual means of correspondence between the parties, I find this does not over ride the provisions of the Act.

**Conclusion:**

I dismiss the application of the tenants without leave to reapply. There is no recovery of the filing fee due to lack of success.

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: April 19, 2017

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Residential Tenancy Branch

