



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act"), for:

- an order of possession for landlord's use of property, pursuant to section 55.

The tenant did not attend this hearing, which lasted approximately 20 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on April 6, 2020, by way of email. He claimed that due to the covid-19 pandemic and the state of emergency, he had to serve by email.

The director's order, dated March 30, 2020, states the following regarding email service during the state of emergency (my emphasis added):

Pursuant to sections 71(2)(b) and (c) of the Residential Tenancy Act and sections 64(2)(b) and (c) of the Manufactured Home Park Tenancy Act, I order 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 or section 81 or 82 of the Manufactured Home Park Tenancy Act has been sufficiently given or served for the purposes of the applicable 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.*

Accordingly, I find that the landlord failed to provide sufficient evidence that the tenant was served with the landlord's application by email. The landlord did not provide a copy of the email or proof that the tenant could receive email service at a specific email address. The landlord failed to show who the email was sent to, where it was sent from, what information was included in the email, whether the tenant confirmed receipt of the email, whether the tenant responded to the email, and whether the tenant's and landlord's email addresses are routinely used for tenancy matters. These requirements are all noted in the above director's order to confirm or deem service of the email.

I notified the landlord that his application was dismissed with leave to reapply. I informed him that he could file a new application and pay a new filing fee, if he wished to pursue this application further. I notified him to provide proof of service for the next hearing. I informed him that he could obtain information only, not legal advice, from an information officer at the Residential Tenancy Branch if he required further assistance.

Conclusion

The landlord's application is dismissed with 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: May 26, 2020