



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, FFT

### Introduction

The Applicant filed their Application for Dispute Resolution on February 11, 2021. They seek the landlord's compliance with the legislation and/or the tenancy agreement, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on June 28, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

### Preliminary Matter

To proceed with this decision in this matter, I must be satisfied that the Applicant made reasonable attempts to serve the Notice of Dispute Resolution (the "Notice") to the Respondent. This means the Applicant must provide proof that the document was served at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

The Applicant here was the subtenant of the Respondent, with a tenancy agreement in place from May 7, 2020 through to December 2020. A separate tenancy agreement shows a rental agency as the tenant of the rental unit owners, from January 1, 2020 to December 31, 2020. Based on these agreements and the testimony of the Applicant, I find this was a sublease agreement. This is as defined in s. 1 of the *Act*.

In the hearing, the Applicant presented the attempts they made to serve the Respondent with the Notice. They sent the Notice and their prepared evidence via a messaging app and email to the Respondent; however, they received no response or acknowledgement.

To the Applicant's knowledge, the Respondent was affiliated with a rental agency so named in the separate agreement with the rental unit owners. When the Applicant checked for the public business listing of that agency, they found a postal address and mailed their prepared evidence and Notice of this hearing. This too received no response.

As proof of service, the Applicant provided two receipts showing delivery from a post office on February 24, 2021. They also provided two labels showing registered mail tracking numbers. There is no address provided on these labels; nor does the Respondent's name appear on these labels. Using the tracking numbers, I discovered both these pieces of registered mail were returned to the sender (i.e., the Applicant) on March 19, 2021.

The *Act* s. 89(1) stipulates that an application for dispute resolution, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*]
- (f) by any other means of service provided for in the regulations.

The *Residential Tenancy Regulation* provides for service of documents "by emailing a copy to an email address provided as an address for service by the purpose."

I find the Applicant did not fulfill the service provisions under s. 89 of the *Act*. I make this finding for the following reasons:

- the tenancy agreement between the Applicant and the Respondent, aside from being unsigned by the Applicant, does not contain an address for service
- the tenancy agreement does not show the Respondent is an agent of the rental agency
- the separate tenancy agreement between the rental agency and the rental unit owners does not name the Respondent as a representative of the rental agency
- the business information for the rental agency does not show the Respondent as affiliated with that business

- two separate registered mail labels show neither the Respondent's name nor that of the business entity they supposedly work for – these two pieces were returned to the sender
- the Applicant provided a copy of an email to an address provided for the rental agency – there is no separate email address for the Respondent here, and the Applicant in the hearing stated they received no response to this message – further, there is no indication this email address is that provided by the Respondent specifically as an address for service.

I find the Applicant has not fulfilled the service provisions required as per the *Residential Tenancy Branch Rules of Procedure* Rule 3.5. The email address is not linked to the Respondent in a definitive way. Further, there is no record of a postal address, nor any record that the Respondent is affiliated with the rental agency that had an agreement with the rental unit owners.

For these reasons, I find the Notice and the Applicant's evidence were not served in a way recognized by the *Act*. I dismiss the Application for this reason, with leave to reapply. The *Act* s. 71 provides for an order for substituted service; however, the Applicant must show that email or text was their regular method of communication with the Respondent.

### Conclusion

For reasons above, I dismiss the Application for a landlord's compliance with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 29, 2021

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Residential Tenancy Branch