



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on October 26, 2021. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent.

The Landlord attended the hearing. However, the Tenant did not. The Landlord testified that he sent the Notice of Hearing and evidence to the Tenant by email on May 12, 2021. The Landlord stated he never received an email response from the Tenant, and confirmed that the Tenant has not emailed him from this address since December 2020. The Landlord confirmed he never made an agreement, formally, with the Tenant to serve him via email. The Landlord stated he sent a text message to the Tenant on June 8, 2021, informing him that there was an upcoming hearing, and that the Notice of Hearing had been sent to his email. The Landlord provided a copy of a text message from the Tenant which shows he responded to the text message, but receipt of the email containing the complete Notice of Hearing, and related documentation, is unclear.

The Landlord stated he did not try to serve the Tenant in any other manner, as the Tenant left without giving a forwarding address in writing. The Landlord applied for an order for substituted service but on May 19, 2021, this request was denied, due to lack of evidence that the email was currently used by the Tenant. I note the Landlord attempted serving the Tenant anyways at this email address, as this was all he had. However, the Landlord was denied permission to serve in an alternative manner. I find the Landlord was required to serve the Tenant pursuant to section 89 of the Act.

I note the following portion of the Act regarding how a Landlord must serve the Tenant with this application package:

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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 Landlord did not serve in any of the above methods, and only sent the Notice of Hearing by email, which the Tenant did not acknowledge or respond to, via email. I do not find the text message sufficient to demonstrate the package was received by email. I note the following Policy Guideline #12 with respect to the service of documents:

When a party cannot be served by any of the methods permitted under the Legislation, the Residential Tenancy Branch may order a substituted form of service (see "Orders for substituted service" in section 13 below).

At any time, a tenant or landlord may provide an email address for service purposes. By providing an email address, the person agrees that important documents pertaining to their tenancy may be served on them by email.

[...]

Email service

o To serve documents by email, the party being served must have provided an email address specifically for the purposes of being served documents.

If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should

be used, or an order for substituted service obtained.

In order for the Landlord to serve the Tenant with this Notice of Hearing and evidence via email, the Landlord would have had to obtain an Order for Substituted service prior to this hearing, permitting him to serve the Tenant in a manner not specifically laid out under section 89 (1) above, or the Landlord could have sent this documentation by email if there was sufficient evidence to show the Tenant specifically provided his email address to the Landlord as his address for service. Typically this would be done expressly, and in writing. No Substituted Service Order was granted, and there is no evidence to show the Tenant specifically gave the Landlord his email address for service purposes. I do not find using email occasionally, 6 months prior is sufficient to demonstrate that this was an address provided to the Landlord, by the Tenant, for service purposes.

Ultimately, I find there is insufficient evidence that the Tenant was served in accordance with any of the allowable methods of service under section 89 of the Act. Although email service is acceptable in some limited circumstances (by substituted service order, or through a separate agreement to serve via email), I note the Landlord has not sufficiently met those criteria, such that I could find he has properly served the Tenant with this Notice of Hearing.

Since the Notice of Dispute Resolution has not been sufficiently served, I dismiss the Landlords' application, with leave to reapply. However, this does not extend any time limits under the Act.

Conclusion

The Landlord's application is dismissed, with leave.

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: October 26, 2021

Residential Tenancy Branch