



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL, MNDC, MNR, MND, FF

### Introduction, Preliminary and Procedural Matters-

This hearing dealt with the landlord's application and amended application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) issued to the tenant;
- compensation for a monetary loss or other money owed;
- a monetary order for unpaid rent;
- compensation for alleged damage to the rental unit by the tenant; and
- recovery of the filing fee.

At the beginning of the hearing, the only participant attending was the landlord. The tenant was not present. In response to my question about proof of service of her Application for Dispute Resolution, evidence, and Notice of Hearing (application package), the landlord said the tenant was served by email.

The landlord referred to the order for substituted service allowing service on the tenant by email. In a Decision of November 16, 2021, an adjudicator with the Residential Tenancy Branch (RTB) granted the landlord an order allowing the landlord to serve the application package to the email address provided by the landlord. In that Decision, the adjudicator ordered as follows:

**I order the landlord to provide proof of service of the e-mail which may include a printout of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served the tenant in accordance with this order. If possible, the landlord should provide a read receipt confirming the e-mail was opened and viewed by the tenant.**

The landlord could not point me to the evidence of proof of service as ordered and I also reviewed all the evidence uploaded to the RTB system.

The landlord confirmed that she no longer required an order of possession of the rental unit, as the tenant vacated on or about October 1, 2021.

At the point I was informing the landlord that her application would be dismissed with leave to reapply, the tenant connected to the teleconference at 11:17 a.m. The tenant appeared to be unwell and struggling to speak. The tenant said that he and his family had Covid and he could not participate in the hearing. The tenant submitted he tried to contact the landlord prior to the hearing to arrange for a continuation.

I asked the tenant if he had received the landlord's application, but he was unresponsive. I note that the RTB routinely sends all parties a reminder of the hearing date in advance of the hearing and their attendance is not proof they were served the hearing documents.

### Analysis and Conclusion

Section 89(1) of the Act indicates the ways in which a landlord's application for dispute resolution seeking monetary compensation from the tenant must be given:

(a) by leaving a copy with the person .....

(c) by sending a copy by registered mail to the address at which the person resides .....

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]*; **(substituted service)**;

(f) by any other means of service provided for in the regulations. **(given to a person by emailing a copy to an email address provided as an address for service by the person)**

(Emphasis added)

In the case before me, I find that the landlord provided insufficient evidence that she served the tenant with her application for dispute resolution as required under section

89(1)(f) of the Act, as the landlord did not upload proof of service as ordered by the adjudicator on November 16, 2021. For this reason, I could not find that the landlord complied with the adjudicator's Decision.

Both parties have a right to a fair hearing and the tenant would not be aware of the hearing without having been served the Notice of a Dispute Resolution Hearing and application as required by the Act and the Decision granting an order for substituted service.

For these reasons, I **dismiss** the landlord's application, **with leave to reapply**.

Leave to reapply does not extend any applicable time limitation deadlines.

As I did not proceed with consideration of the merits of the landlord's application, I decline to award recovery of the filing fee.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 13, 2022

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Residential Tenancy Branch