



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD 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 February 18, 2022. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent; and,
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The Landlord attended the hearing. However, the Tenant did not. The Landlord testified that he sent the Notice of Dispute Resolution Proceeding and evidence to the Tenant by email on August 24, 2021.

The Landlord stated that he has not used email as a means to communicate with the Tenant in the past, for tenancy matters, but the Landlord stated he obtained the Tenant's email address near the end of the tenancy, when he spoke with her. The Landlord stated that the Tenant refused to provide her forwarding address in writing, and also refused to pay rent she owed. The Landlord filed this application after the Tenant vacated the rental unit but he did not apply for an order for substituted service.

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 Dispute Resolution Proceeding by email, which the Tenant did not acknowledge or respond to. 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.

A tenant or landlord must provide to the other party, in writing, the email address to be used. There is no prescribed form for doing so, but parties may want to use RTB-51 - "Address for Service" form and provide it to the other party.

If there has been a history of communication between parties by email, but a party has not specifically provided an email address for service purposes, it is not advisable to use email as a service method.

[...]

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.

Although the Landlord acquired the Tenant's email address in the latter part of the tenancy, it is not clear whether or not the Tenant agreed for this to be an acceptable way to be sent and served documents, formally, as this was not done in writing. Typically, In order for the Landlord to serve the Tenant with this Notice of Dispute Resolution Proceeding 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 served the Tenant via email if there was sufficient evidence to show the Tenant specifically provided her email address to the Landlord as his address for service. Typically, this would be done expressly, and in writing. No Substituted Service Order was applied for, and there is no evidence to show the Tenant specifically gave the Landlord her email address for service purposes, in writing.

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 Dispute Resolution Proceeding.

Since the Notice of Dispute Resolution Proceeding 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. I note the Landlord does not have the forwarding address of the Tenant, so no orders will be made for the return of the deposit.

The Landlord may wish to seek an order for substituted service, should they wish to re-file their monetary claim, and should they decide to pursue service in a manner not listed under section 89 of the Act. Should the Landlord use a method of service under section 89 of the Act, they will not require a substituted service order if and when they re-file their application and get a new Notice of Dispute Resolution proceeding. The Landlord is granted leave to re-apply for all outstanding monetary compensation.

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: February 18, 2022

Residential Tenancy Branch