



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid rent and/or utilities.

The landlord appeared at the hearing; however, there was no appearance on part of the tenant despite leaving the teleconference call open at least 20 minutes.

Since the tenant did not appear, I explored service of the landlord's hearing materials to the tenant.

The landlord testified she served the tenant via email on July 29, 2021. I noted the landlord had uploaded an image of the email sent on July 29, 2021 and there was only one attachment. I asked the landlord how she compiled the attachment. The landlord described scanning several documents at a realty office and then emailing the one .pdf document to the tenant. The landlord had not uploaded a copy of the .pdf document emailed to the tenant so that I could view its content.

I asked the landlord if she had the tenant's agreement to serve documents by email and if so, how was she provided the tenant's consent. The landlord stated the tenant's agreement was obtained by an email exchange with the tenant. The landlord had not provided a copy of the email exchange with the tenant so that I may see the tenant's email address used by the tenant or the written consent being given; however, the landlord testified that the email exchange pertained to the landlord sending the tenant an accounting of the outstanding rent and the tenant responded she did not agree and that the matter should be dealt with by filing their respective evidence with the Residential Tenancy Branch. The landlord subsequently testified that a similar exchange transpired over text message exchanges with the tenant. The landlord was of

the position the exchange of emails constituted the tenant's consent to being served by email.

The landlord acknowledged she did not receive a response from the tenant to the July 29, 2021 email and she believes the tenant has left the country although the tenant did not provide a forwarding address. The landlord acknowledged she had not requested or obtained a Substituted Service Order authorizing her to serve the tenant by email.

Section 59 of the Act provides that an Application for Dispute Resolution must be served upon the other party within three days of making the Application for Dispute Resolution. Section 89 provides for the ways an Application for Dispute Resolution and other required documents must be served upon the respondent. Where a respondent does not appear for the hearing, the applicant bears the burden to prove service occurred in a manner that complies with the Act.

Section 89(1)(f) permits service of an Application for Dispute Resolution for a monetary order by "any other means of service provided for in the regulations."

Section 43 of the Regulations permits:

(2) For the purposes of section 89 (1) (f) [*special rules for certain documents*] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

[My emphasis underlined]

In keeping with section 89(1)(f) of the Act and section 43(2) of the Regulations, Residential Tenancy Branch Policy Guideline 12: *Service provisions* provides information pertaining to service by email on page 4, as follows:

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.

[My emphasis underlined]

In this case, I find the passages the landlord read aloud to me during this hearing did not satisfy me that the tenant had provided the landlord with an email address specifically for the purposes of being served documents and the landlord had not obtained a Substituted Service order authorizing service by email. As such, I find I am unsatisfied that the service requirements of section 89(1) were met and I declined to hear this case further.

The landlord's application is dismissed with leave to reapply. It is important to note that this does not extend any applicable time limit under the Act.

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 01, 2022

Residential Tenancy Branch