



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Belmont Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on August 17, 2021, under the *Residential Tenancy Act* (the Act), seeking:

- Recovery of unpaid rent;
- Retention of the security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on March 7, 2022, and was attended by three agents for the Landlord (the Agents), all of whom provided affirmed testimony. The Tenants did not attend. The Agents were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Agents were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agents were asked to refrain from speaking over myself and one another and to hold their questions and responses until it was their opportunity to speak. The Agents were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Rules of Procedure state that respondents must be served with a copy of the Application and Notice of Hearing. As the Tenants did not attend the hearing, I inquired about service of these documents as explained below.

The Agents testified that the Notice of Dispute Resolution Proceeding (NODRP) package, which includes a copy of the Application and the Notice of Hearing, were sent to the Tenants by email and provided copies of several emails sent to the Tenants, including attachments. No reply emails from the Tenants or documentation showing repeated communications between the parties at the email address used regarding the tenancy were submitted for my review and consideration.

Sections 88(j) and 89(1)(f) allow service by any other means of service provided for in the regulations. Sections 43(1) and 43(2) of the regulation state that for the purposes of section 88(j) and 89(1)(f) of the *Act*, the documents described in section 88 and 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. Although the tenancy agreement lists an email address for the Tenants, nothing in the tenancy agreement states that this email address may be used for service. As a result, I am not satisfied that it can be. As there is no other documentary evidence before me demonstrating that the email address used by the Landlord for service of the NODRP package was provided by the Tenants to the Landlord as an address for service, I find that it was not. As a result, I find that sections 88(j), 89(1)(f), and section 43 of the regulations do not apply.

Although I also considered whether I could grant an order for substituted service or deem the NODRP served pursuant to section 71 of the *Act*, I find that I cannot, as no history of back and forth communication by email at that email address regarding the tenancy was submitted for my review and consideration. As a result, I have no way of knowing whether this is an email address the Tenants could reasonably have been expected to be using for communication regarding the tenancy and therefore whether they could reasonably have been expected to receive the emails containing documents pertaining to this hearing, including the NODRP.

The opportunity to know the case against you and to provide evidence in your defense is fundamental to the dispute resolution process. As the Landlord or their Agents have failed to satisfy me on a balance of probabilities that the Tenants were either served or deemed served with the NODRP as required, I therefore find that it would be a breach of the *Act*, the Rules of Procedure, and the principles of administrative justice and procedural fairness, to proceed with the hearing. Based on the above, I therefore dismiss the Application with leave to reapply.

As the Landlord's Application is dismissed, I decline to grant 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*.

Dated: March 7, 2022

Residential Tenancy Branch