



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on February 23, 2022 (the "Application"). The Tenant applied for an order that the Landlord comply with the regulations, tenancy agreement or the *Act*, pursuant to the *Residential Tenancy Act* (the "*Act*").

The Tenant and the Landlord's Agent attended the hearing at the appointed date and time. At the start of the hearing, the Landlord's Agent stated that the Landlord had only received one page of the Tenant's Application which was sent them by "What's App". The Landlord's Agent stated that he was unsure as to the details of the Tenant's Application and was therefore unsure how to prepare for the hearing.

The Tenant stated that he sent the Application by What's App, but also by email. The Landlord's Agent stated that the Landlord had not received an email, nor did the Landlord coset to email being used as a form of service for tenancy related documents. The Tenant stated that he had confirmed with the Landlord that they had received the Tenant's Application, however, the Tenant did not provide any such confirmation in their evidence.

Preliminary Matters - Service

According to Section 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.

In this case, the Tenant state that they served the Landlord and their Agent by using “What’s App” and email. As the Landlord’s Agent stated that they only received one page of the Application, and the Tenant provided insufficient evidence to demonstrate that the Landlord was properly served the full Application package, I find that the Landlord was not sufficiently served pursuant to Section 89 of the Act. As such, the Tenant’s Application is dismissed WITH leave to reapply.

With respect to email being used for service of documents the parties should be aware;

According to Residential Tenancy Regulation Section 43 (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.

According to the Residential Tenancy Policy Guideline 12;

Any applicant for dispute resolution must provide an address for service. This could be a home, business or other address that is regularly monitored. The respondent’s address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

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 person who does not regularly check their email should not provide an email address to the other party for service purposes.

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. If no other method of service is successful, a party may apply for a substituted service order (RTB-13 - Application for Substituted Service), asking for an order allowing service by email, and provide evidence of a history of communication between the parties at that email address. Parties may face delays or risk their application being dismissed if service is not effected in accordance with the legislation.

If an email address given for the purposes of serving documents changes at any time, the onus is on the party to ensure an updated address is provided to the other party, or that the other party is advised that it is no longer acceptable to serve documents at the email address provided. If such notice is received, email service is no longer a method of service available to serve documents and another method of service set out in the legislation must be used instead.

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: June 06, 2022

Residential Tenancy Branch