



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNL-MT, MNDCT, FFT

### **Introduction**

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants, in which they applied to cancel a Two Month Notice to End Tenancy for Landlord's Use, for more time to apply to cancel the Two Month Notice to End Tenancy for Landlord's Use, for a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing this Application for Dispute Resolution.

At the outset of the hearing the Tenant stated that the rental unit was vacated on April 28, 2022 and, as such, the Tenants would like to withdraw the application to cancel a Two Month Notice to End Tenancy for Landlord's Use and for more time to apply to cancel the Two Month Notice to End Tenancy for Landlord's Use. I find this application is reasonable and the Application for Dispute Resolution has been amended accordingly.

The Tenant stated that on April 08, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch prior to April 08, 2022 was sent to the Landlord, via email. The Tenants submitted a copy of the email that was sent on April 08, 2022.

At the hearing the Tenant stated that the Tenants submitted a RTB-51, in which the Landlord gave the Tenant authority to serve hearing documents to the Landlord, via email. Upon closer inspection, I find that the RTB-51 submitted in evidence gives the Landlord authority to serve the Tenants with documents via email. It does not give the Tenants authority to serve hearing documents to the Landlord.

The Tenant was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Tenant affirmed that she would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Tenant was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. She affirmed that she would not record any portion of these proceedings.

### Issue(s) to be Decided

Are the Tenants entitled to a monetary Order because they were served with a Two Month Notice to End Tenancy for Landlord's Use?

### Analysis

The purpose of serving the Dispute Resolution Package to a landlord is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the tenant. When a tenant files an Application for Dispute Resolution in which the tenant applies for a monetary Order, the tenant has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Residential Tenancy Act (Act)* permits a party to serve an Application for Dispute Resolution to the other party in 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.

Section 43(2) of the *Residential Tenancy Regulation* stipulates that documents described in section 89 (1) of the *Act* may, for the purposes of section 89(1)(f) of the *Act*, be given to a person by emailing a copy to an email address provided as an address for service by the person.

Based on the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Landlord was served with the Dispute Resolution Package by email on April 08, 2022.

As stated in the introduction, the RTB-51 that was submitted in evidence gives the Landlord authority to serve hearing documents to the Tenants, via email. It does not give the Tenants authority to serve hearing documents to the Landlord via email. In the absence of proof that the Landlord gave the Tenants authority to serve hearing documents via email, I cannot conclude that the hearing documents were properly served to the Landlord in accordance with section 89(1)(f) of the *Act*.

As there is insufficient evidence to conclude that hearing documents were served to the Landlord in accordance with section 89(1)(f) of the *Act*, this hearing should not have proceeded in the absence of the Landlord.

Although the hearing proceeded because I mistakenly concluded that the Landlord had been properly served with the Application for Dispute Resolution Package, the testimony provided by the Tenant is not being recorded here, as the hearing should not have proceeded.

### Conclusion

As there is insufficient evidence to conclude that hearing documents were served to the Landlord in accordance with section 89(1)(f) of the *Act*, the Application for Dispute Resolution is dismissed, with leave to reapply.

The Tenants retain the right to file another Application for Dispute Resolution in which they seek compensation for money owed to them on the basis of being served with a Two Month Notice to End Tenancy for Landlord's Use.

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: July 20, 2022

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Residential Tenancy Branch