



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      OLC, MNDCT, RP, LRE, PSF, MNRT, RR, FFL, OPR, OPC, MNDL, MNRL-S, MNDCL

### Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the Residential Tenancy Act (the Act) for:

- a Monetary Order for damage or compensation under the Act, pursuant to section 67;
- an Order for regular repairs, pursuant to section 32;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 62;
- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70;
- an Order for the landlord to comply with the Act, regulation, and/or the tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the Residential Tenancy Act (the Act) for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- an Order of Possession for Cause, pursuant to sections 47 and 55;
- a Monetary Order for damages, pursuant to section 67;
- a Monetary Order for damage or compensation under the Act, pursuant to section 67;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and

- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

This matter was scheduled as a result of the tenants being successful in their Review Consideration application.

#### Preliminary Issue- Failure to Attend

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord and his agent attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, the landlord's agent and I were the only ones who had called into this teleconference.

Rule 7.1 of the Residential Tenancy Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Based on the above, in the absence of any evidence or submissions from the tenants, I order the tenants' application dismissed without liberty to reapply.

#### Preliminary Issue- Service

The agent testified that the landlord served the tenants with his application for dispute resolution via email on April 26, 2022. The agent testified there was no agreement, written or oral that the parties communicate through email. The agent testified that all documents were re-submitted sometime in September however, the April 26, 2022 serving email was not entered into evidence and no written service agreement for service via email was entered into evidence.

Section 89 of the Act sets out the approved methods of service for applications for dispute resolution as follows:

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.

Section 43(2) of the Regulation to the Residential Tenancy Act states:

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.

Residential Tenancy Guideline #12 states:

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.

I find that the landlord has not proved, on a balance of probabilities, that the tenants agreed to be served via email as no substantiating documents were entered into evidence.

Regular use of email to communicate between the parties may be a ground for a substituted service order, which the landlord may apply for in a future application. Rule 3.5 of the Residential Tenancy Branch Rules of Procedure (the “Rules”) states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

The landlord did not enter into evidence a copy of the April 26, 2022 serving email. I find that the landlord has not proved, pursuant to Rule 3.5, that the landlord's application for dispute resolution was served on the tenants via email on April 26, 2022 because no substantiating documents were entered into evidence and the tenants did not attend. It is worth noting that the agent testified that the tenants were emailed on May 25, 2022 with notice of the landlords claim which is contradictory to todays' testimony. In addition, the agent testified that the tenants vacated the property August 20, 2022 but he then served them sometime in September. Based on the the contradictory and insufficient evidence before me, I must dismiss the landlord's application for dispute resolution with leave to reapply for failure to prove service in accordance with section 89 of the Act.

At the original hearing, the tenants failed to participate, and their application was dismissed without leave to reapply. At the original hearing the landlord failed to provide sufficient evidence to show that the tenants were properly served with their claim and their application was dismissed without leave to reapply. I have made the same findings and find it appropriate to confirm the original decision.

### Conclusion

The original decision is confirmed.

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: October 13, 2022

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Residential Tenancy Branch