



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0777895 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on November 22, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Monetary compensation pursuant to section 51 of the Act, related to a 2 Month Notice to End Tenancy.

The Tenant attended the hearing. However, the Landlords did not. The Tenant testified that she sent the Notice of Dispute Resolution Proceeding and evidence to the Landlord by email on November 4, 2022.

The Tenant stated she sent this to an email address she had for the Landlord, but she acknowledged that she did not have any agreement, in writing, and in advance to serve the Landlord via email. Further, the Tenant did not apply for an order for substituted service.

I note the following portion of the Act regarding how an applicant must serve the respondent with this application package:

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.*

The Tenant did not serve in any of the above methods, and only sent the Notice of Dispute Resolution Proceeding by email. The Tenant stated the Landlord replied to the email. However, no documentary evidence was provided to corroborate this, and there is no way to determine whether these documents (sent as attachments) were actually received and legible. I note the following Policy Guideline #12 with respect to the service of documents:

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.

[...]

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.

In order for the Tenant to serve the Landlord with this Notice of Dispute Resolution Proceeding and evidence via email, the Tenant would have had to obtain an Order for Substituted service prior to this hearing, permitting him to serve the Landlord in a manner not specifically laid out under section 89 (1) above, or the Tenant could have sent this documentation by email if there was sufficient evidence to show the Landlord specifically provided this email address to the Tenant as their address for service. Typically this would

be done expressly, and in writing. No Substituted Service Order was applied for, and there is no evidence to show the Landlord specifically gave the Tenant their email address for service purposes.

Ultimately, I find there is insufficient evidence that the Landlord was served in accordance with any of the allowable methods of service under section 89 of the Act. Although email service is acceptable in some limited circumstances (by substituted service order, or through a separate agreement to serve via email), I note the Tenant has not sufficiently met those criteria, such that I could find she has properly served the Landlord with this Notice of Dispute Resolution Proceeding.

Further, I note the Tenant made this application on March 25, 2022, and was given the Notice of Dispute Resolution Proceeding from our office, to serve to the respondent, on March 30, 2022. The Tenant was supposed to send this to the Landlord within 3 days, as per the Rules. However, she waited nearly 8 months, and only sent it via email a couple of weeks before the hearing, which I find is prejudicial to the respondent and their ability to respond.

Given all of the above, I dismiss the Tenant's application, with leave to reapply. However, this does not extend any time limits under the Act.

Conclusion

The Tenant's application is dismissed, with leave.

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: November 23, 2022

Residential Tenancy Branch