



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, OLC, FFT**

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on June 21, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord comply with the Act;
- a monetary order for compensation; and
- an order granting recovery of the filing fee.

The Tenant, the Tenant's Advocate L.J, the Landlord, and the Landlord's Agent F.A. attended the hearing at the appointed date and time. At the start of the hearing, the Tenant stated that they were unsure about their Application and had thoughts about withdrawing the Application. The Tenant stated that they decided to amend their Application, and served the Notice of Hearing and amendment to the Landlord by email on October 14, 2022.

The Tenant also referred to serving the Landlord by Canada Post Registered Mail, however, the Tenant did not indicate when the mailing took place, nor did the Tenant provide evidence in support. The Landlord stated that they have not yet received the Notice of Hearing, nor the Tenant's evidence. The Landlord stated that they only received the phone number and access code from the Tenant.

Preliminary Matters - Service

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following: a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution; b) the Respondent Instructions for Dispute Resolution; c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and d) any other evidence submitted to the Residential Tenancy Branch directly or through a

Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

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 did not serve the Notice of Hearing to the Landlord within three days after receiving the Notice of Hearing from the Tenancy Branch. Furthermore, I find that the Tenant has provided insufficient evidence to demonstrate that they served the Landlord with the Notice of Hearing and documentary evidence at all. The Landlord stated that they did not receive a copy of the Notice of Hearing or evidence from the Tenant. 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 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.

Conclusion

The Tenant's Application is dismissed with leave to reapply.

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 08, 2022

Residential Tenancy Branch