



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNRL-S, MNDL-S, MNDCL-S, FFL

### Introduction

This hearing 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 unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:32 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was 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 landlords and I were the only ones who had called into this teleconference.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made

by the director commits an offence and is liable on conviction to a fine of not more than \$5 000.”

The landlord confirmed her email addresses for service of this Decision

#### Preliminary Issue- Tenancy Ended

The landlord testified that this tenancy has ended, and the tenants have moved out. As this tenancy has already ended, I find that the landlord’s applications for an Order of Possession are no longer necessary. The landlord’s applications for an Order of Possession are therefore dismissed without leave to reapply.

#### Preliminary Issue- Service

The landlord testified that she served the tenants with her application for dispute resolution via registered mail to the address on the tenants’ I.D. cards provided to the landlord at the start of this tenancy. The landlord testified that the tenants did not provide a forwarding address at the end of this tenancy.

Section 89(1)(c) of the *Act* states:

**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:

(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;

I find that service to a previous mailing address is not service to an address at which the tenants currently reside. I find that the registered mailing does not accord with section 89(1)(c) of the *Act*.

The landlord testified that she applied for substituted service which was granted. The substituted service decision dated August 18, 2022 states:

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For this reason, I allow the landlord substituted service of the Notice of Dispute Resolution Proceeding, with supporting documents and written evidence, by e-mail to Tenant C.B. at the first e-mail address indicated on the first page of this decision.

I order the landlord to provide proof of service of the e-mail which may include a printout of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served Tenant C.B. in accordance with this order. If possible, the landlord should provide a read receipt confirming the e-mail was opened and viewed by Tenant C.B.

....

For this reason, I allow the landlord substituted service of the Notice of Dispute Resolution Proceeding, with supporting documents and written evidence, by e-mail to Tenant L.P. at the first e-mail address indicated on the first page of this decision.

I order the landlord to provide proof of service of the e-mail which may include a printout of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served Tenant L.P. in accordance with this order. If possible, the landlord should provide a read receipt confirming the e-mail was opened and viewed by Tenant C.B.

### Conclusion

The landlord is granted an order for substituted service. The landlord may serve the tenants the Notice of Dispute Resolution Proceeding, with supporting documents and written evidence, along with a copy of this substituted service decision, to Tenant C.B.'s e-mail address as set out above. I order that documents served in this manner have been sufficiently served to the tenants for the purposes of the Act, three days after the date that the e-mail is sent by the landlord to Tenant C.B.

The landlord testified that the tenants were served with the landlord's application for dispute resolution at the e-mail address approved in the August 18, 2022 substituted service decision (the "approved email address") on July 28, 2022.

On July 29, 2022 the landlord filed an amendment seeking to increase the landlord's monetary claim. The landlord testified that the tenants were each served with the above amendment on July 29, 2022 via email.

The landlord entered into evidence an undated email to an email address that was not approved for substituted service and to "C.B."; however, the "C.B." email address cannot be seen, just the name "C.B.". The above email shows attachments titled "Applicant\_Instructions[13487].pdf", "Dispute...", and "[Landlord- Condition of...".

No other emails pertaining to service were entered into evidence. The landlord filled in RTB Form 44 – Proof of Service of Notice of Direct Request Proceeding, for each tenant. Form 44 pertaining to tenant C.B. states that the landlord served tenant C.B. via email. The email address provided on that form is slightly different than the approved email, in that it is missing a period found in the approved email address. Form 44 pertaining to tenant L.P. states that the landlord served tenant L.P. at an email address not approved of in the substituted service decision. The service emails were not entered into evidence.

In the hearing I informed the landlord that she has not provided proof that she emailed the tenants at the approved email address, with her application for dispute resolution, evidence, amendment or substituted service decision. The landlord testified that all of the above documents were served to the approved email address. I allowed the landlord 20 minutes in the hearing to upload copies of the service emails in which the date of the email, the address the email was sent to, and the included attachments were visible. The landlord was unable to upload the required documents in the 20 minutes provided.

Rule 3.5 of the Residential Tenancy Branch Policy Guideline 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.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure (the “*Rules*”) state that evidence must be received by the respondent and the Residential Tenancy Branch directly not less than 14 days before the hearing.

Despite Rule 3.14 of the Rules, I provided the landlord with an opportunity to provide late evidence during the hearing to prove service as required under Rule 3.5 and as set out in the substituted service decision. While the landlord attempted to upload the required documents, she was unable to do so in the time provided.

I find that the landlord has not proved, on a balance of probabilities, that the tenants were served at the approved email address, with the substituted service decision, the landlord’s application for dispute resolution, the landlord’s evidence, or the landlord’s amendment because the serving emails showing the date the documents were sent, the email address the documents were sent to and the attachments, were not entered into evidence. I find that the only serving email entered into evidence does not prove service because the approved email address cannot be seen. I find that neither RTB Form 44 provides proof of service to the approved email address.

As the landlord has not proved service in accordance with the substituted service decision or section 89 of the *Act*, I dismiss the landlord’s application with leave to reapply, except the landlord’s claim for the recovery of the filing fee, which is dismissed without leave to reapply.

### Conclusion

The landlord’s application for dispute resolution is dismissed with leave to reapply.

The landlord’s application to recover the filing fee is dismissed without 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: December 06, 2022

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Residential Tenancy Branch