



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, MNETC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant March 30, 2022 (the “Application”). The Tenant applied as follows:

- For compensation for monetary loss or other money owed
- For return of the security deposit
- For compensation because the Landlord ended the tenancy and has not complied with the Act or used the rental unit/site for the stated purpose

The Tenant attended the hearing. Nobody attended the hearing for the Landlord. I explained the hearing process to the Tenant. I told the Tenant they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package.

The Tenant testified that the hearing package was emailed to the Landlord on April 11, 2022. The Tenant provided the Landlord’s email address. The only documentary evidence submitted about the Landlord’s email address were two text messages from November 26 and 29, 2020, in which the Landlord provided their email address.

The Tenant had applied for substituted service by email and a decision was issued May 17, 2022. The decision states in part the following (from pages 1 to 3):

The tenant has requested to serve the Notice of Dispute Resolution Proceeding, along with supporting documents, to the landlord by e-mail...

The tenant has submitted the following evidentiary material:...

- A copy of six **text messages** exchanged between the landlord and the tenant **in which the landlord provides a Shaw e-mail address on November 29, 2020...**

I find the tenant has failed to demonstrate that the landlord cannot be served by any of the methods permitted under the legislation.

I have reviewed all documentary evidence and I find that the landlord's e-mail address does not appear on the Application for Substituted Service. I also find that three different e-mail addresses appear on the evidence submitted by the tenant.

I find I am not able to confirm what e-mail address the tenant would like to use to serve documents to the landlord.

I also find that the text message providing the Shaw e-mail address is dated November 29, 2020, over a year ago. The e-transfers were sent in November 2021, almost six months ago.

The tenant has not submitted a copy of any recent e-mails received from the landlord or any other proof, such as e-mail "read receipts", to demonstrate that the landlord's e-mail account is currently active and being regularly monitored, such as within the past two months.

I find I cannot conclude from this that the landlord would receive the Notice of Dispute Resolution Proceeding and have actual knowledge of the tenant's Notice if it is served to the landlord by e-mail.

For this reason, **the tenant's application for substituted service of the Notice of Dispute Resolution Proceeding to the landlord by e-mail is dismissed** with leave to reapply.

(emphasis added)

The Tenant was required to serve the hearing package on the Landlord in accordance with section 89(1) of the *Residential Tenancy Act* (the “Act”) which states:

89 (1) An application for dispute resolution...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...
- (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. [an email address **provided by the Landlord as an address for service** (emphasis added)]

The Tenant emailed the hearing package to the Landlord. The Tenant acknowledged in the hearing that the email address used was not an email address provided by the Landlord as an address for service.

The Tenant testified that the email address used for service was commonly used by the parties to communicate about the tenancy and used by the Tenant to pay rent. However, the Tenant sought a substituted service order allowing them to serve the Landlord at the email address used and was denied their request. The Tenant therefore had two options, to serve the hearing package by another method or submit further evidence prior to the hearing showing that the email address was commonly used by the parties to communicate about the tenancy. The Tenant did neither.

The Tenant did not re-serve the hearing package by a different method. I note that the Tenant knows the Landlord's address and could have sent the hearing package by registered mail. Further, the Tenant did not submit any further evidence to satisfy me that the Landlord would have received the hearing package at the email address used. The only documentary evidence before me about the Landlord's email address is the

November 26 and 29, 2020 text messages, already determined to be insufficient evidence to allow for email service by the Adjudicator in the substituted service decision sent to the Tenant May 18, 2022.

During the hearing, the Tenant said they could submit documentary evidence showing they paid rent to the Landlord at the email address used for service up to October 03, 2021. I gave the Tenant time to look for the documentary evidence. The Tenant said they found the documentary evidence; however, the Tenant acknowledged it did not show the Landlord's email address on it. This would not have been sufficient evidence to satisfy me of service given it does not show the Landlord's email address on it.

At this point, we were 30 minutes into the hearing. I was not satisfied the Tenant was able to provide sufficient evidence of the Landlord's email address and I told the Tenant I was dismissing the Application with leave to re-apply. I did this because I was not satisfied the Tenant served the Landlord with the hearing package in accordance with section 89(1) of the *Act* and was not satisfied the Landlord was sufficiently served in the absence of further compelling evidence about this.

The Application is dismissed with leave to re-apply. The Tenant can re-apply; however, the Tenant must serve the Landlord with the new hearing package in accordance with the *Act*. This decision does not extend any time limits set out in the *Act*.

Conclusion

The Application is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 02, 2022

Residential Tenancy Branch