



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      RP FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on December 15, 2022. The Tenant requested that the Landlord make repairs to the rental unit, site, or property, pursuant to the *Residential Tenancy Act* (the *Act*).

Both parties attended the hearings and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

### Preliminary Matters

The Tenant stated she sent her Notice of Dispute Resolution Proceeding and evidence package to the Landlord via email. However, the Landlord denied getting these documents from the Tenant. Although the Tenant stated she has sent emails to the Landlord in the past, I find there is insufficient evidence showing that the parties had agreed, in advance and in writing, to serve documents via email.

I note the following portion of the Act regarding service:

**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 of the Regulations state the following with respect to service by email:

**Other means of giving or serving documents**

**43** *(1) For the purposes of section 88 (j) [how to give or serve documents generally] of the Act, the documents described in section 88 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.*

*(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.*

*(3) For the purposes of section 89 (2) (f) of the Act, the documents described in section 89 (2) of the Act may be given to a tenant by emailing a copy to an email address provided as an address for service by the tenant.*

The Landlord did not serve in accordance with section 88 or 89 of the Act. Although the Regulations noted above allow for service of documents via email, this must be explicitly agreed to, in advance, preferably in writing, otherwise the parties must use one of the traditional methods under the Act. 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 her 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 an email address to the Tenant as his 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 his email address for service purposes. I do not find using email occasionally, throughout the tenancy is sufficient.

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.

Since the Notice of Dispute Resolution has not been sufficiently served, I dismiss the Tenant's application, with leave to reapply. However, this does not extend any time limits under 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 *Residential Tenancy Act*.

Dated: December 16, 2022