



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, MNDCL-S, FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord had applied for and was successful in obtaining a substitutional service order by serving the tenant by email. The Substituted Service Decision is dated September 14, 2022 and allows the landlord to serve the Notice of Dispute Resolution Proceeding with supporting documents and evidence, along with a copy of the Substituted Service Decision by email, which is sufficiently served 3 days after. It also orders the landlord to provide proof of service of the e-mail, which may include a print-out of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served the tenant in accordance with the order. It also states that if possible, the landlord should provide a read receipt confirming the e-mail was opened and viewed by the tenant.

The landlord advised that the tenant was served with the Notice of Dispute Resolution Proceeding by email twice, on September 2, 2022 and September 16, 2022, and all evidence was served by email on November 24, 2022.

The Notice of Dispute Resolution Proceeding is dated September 1, 2022, and a handwritten note on the copy provided in the landlord's evidence package states, "Served via email Sept 2/22." Other email messages between the landlord and the tenant have also been provided dated August 16, 2022, and I presume they were provided as evidence to obtain the Substituted Service order. Another from the landlord to the tenant is dated September 2, 2022 and contains a secure website as an attachment, and another dated September 16, 2022 containing the Substituted Service Decision, and no other attachments.

During the course of the hearing, I also allowed the landlord to provide a copy of the move-in condition inspection report, which has now been uploaded. However, I have reviewed all of the evidence of the landlord, which does not include proof of service of the e-mail, or a print-out of the sent item, confirmation of delivery receipt, or any other documentation to confirm the landlord has served the tenant in accordance with the order after receiving it from the Residential Tenancy Branch Adjudicator. It appears that the landlord is relying on the September 2, 2022 documentation to show that the tenant was served with the Notice of Dispute Resolution Proceeding in accordance with it, but the Substitutional Service Decision is dated September 14, 2022, meaning that it was served prior to receiving permission to serve it by email. The landlord also advised that the tenant was also served on September 16, 2022 by email and has provided evidence of sending an email to the tenant, however it appears to include only the Substituted Service Decision.

The landlord may not serve the documents required by email prior to receipt of the September 14, 2022 Decision. There is nothing in that Decision to indicate that previous emails to the tenant would constitute sufficient service.

In the circumstances, I am not satisfied that the landlord has established that the tenant has been served in accordance with the *Residential Tenancy Act* or the September 14, 2022 Substitutional Service Decision, and I dismiss the landlord's application with leave to reapply.

### Conclusion

For the reasons set out above, the landlord's application is hereby 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: December 26, 2022

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Residential Tenancy Branch