



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNDC FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on January 23, 2023. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided affirmed testimony. The Landlord testified that she sent the Notice of Dispute Resolution Proceeding to the Tenant by email on or around May 24, 2022. The Tenant denied receipt of this email, and stated he was never served with any hearing documentation.

The Landlord did not provide any documentary evidence to show that she had the Tenant's agreement, in writing, to serve documents via email. The Tenant confirmed he did not come to this agreement in writing before the hearing. The Landlord was not granted any Order for Substituted service prior to this hearing.

I note the following portion of the Act regarding how a Landlord must serve the Tenant with this application package:

**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.*

The Landlord did not serve in any of the above methods, and only sent the Notice of Dispute Resolution Proceeding by email, which the Tenant denied receiving. 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 Landlord to serve the Tenant with this Notice of Dispute Resolution Proceeding and evidence via email, the Landlord would have had to obtain an Order for Substituted service prior to this hearing, permitting her to serve the Tenant in a manner not specifically laid out under section 89 (1) above, or the Landlord could have sent this documentation by email if there was sufficient evidence to show the Tenant specifically provided his email address to the Landlord 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 Tenant specifically gave the Landlord his email address for service purposes.

Ultimately, I find there is insufficient evidence that the Tenant 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 Landlord has not sufficiently met those criteria, such that I could find she has properly served the Tenant with this Notice of Dispute Resolution Proceeding.

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

### Conclusion

The Landlord's application is dismissed, with leave.

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: January 23, 2023

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Residential Tenancy Branch