



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**     OPR-DR, FFL

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent and utilities pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord attended the hearing with their agent NB, which commenced at 11:00 a.m. Both tenants joined the hearing at 11:06 a.m. The hearing continued until 12:01 pm. in order to allow both parties a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The tenants confirmed receipt of the landlord's application and evidence for this hearing. In finding the tenants duly served with the hearing documents in accordance with sections 88 and 89 of the *Act*. The tenants did not submit any written evidence for this hearing.

### **Preliminary Issue – Presentation of Evidence and Attempt to Settle the Dispute**

The landlord raised their concerns during the hearing about the amount of time allotted for the scheduled hearing, and their ability to be heard during this amount of time. As noted during the hearing, the dispute resolution process is intended to be a fair, efficient, and effective process where a decision can be delivered in a timely manner. As noted to both parties during the hearing, only submissions related to the 10 Day Notice to End Tenancy would be heard. As per RTB Rule of Procedure 7.17, the

hearing commenced at 11:00 a.m. and the entire hour was provided to the parties to allow them the opportunity to present evidence related to the claim. I determined at 12:01 p.m. that sufficient evidence was provided by both parties in order for me to render a decision in relation to the 10 Day Notice, and I exercised by discretion pursuant to RTB Rule 8.1 to conclude the hearing at this point.

I also note that pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute. During the hearing the parties did attempt to discuss the issues referenced in this applicaiton, and turn their minds to achieve a compromise and resolution of this dispute. Despite the efforts of both parties, both parties were unable to achieve a resolution, and confirmed that they wished to proceed with the scheduled hearing instead.

### **Preliminary Issue - Service of the 10 Day Notice**

The landlord testified that the tenants were served with the 10 Day Notice to End Tenancy dated October 13, 2022 by way of email on October 13, 2022. The landlord testified that the tenants provided their email during a previous hearing held on August 25, 2022, which the tenants confirmed may be used for service of documents. The landlord provided a copy of a Proof of Service form, which the landlord testified was served to, and signed by the tenants, on October 18, 2022.

The tenants dispute that they had ever provided the landlords with an email address that may used for the purpose of service of documents. The tenants testified that they were personally served with the Proof of Service form on October 18, 2022 when they were informed by the landlord that they were emailed a copy of the 10 Day Notice. The tenants dispute being properly served with a copy of the 10 Day Notice to End Tenancy dated October 13, 2022 in accordance with the service provisions under the *Act* and *Regulations*. The tenants testified that they would have disputed the 10 Day Notice if they were served with one.

Section 88 of the *Act* establishes the requirements for service of documents, while section 43(1) of the *Regulation* sets out the requirements for email service.

### **How to give or serve documents generally**

**88** All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (j) by any other means of service prescribed in the regulations.

**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.

RTB Policy Guideline #12 provides further clarification about the requirements for email service of documents as noted below:

*The Regulation to the Residential Tenancy Act and the Manufactured Home Park Tenancy Act prescribes service to an email address provided for service as an*

*acceptable method of serving documents. Documents may be served by sending a copy of the document to the email address provided as an address for service by the person to be served. If no email address for service has been provided, then this method of service should not be used. Parties may face delays or risk their application being dismissed if service is not effected in accordance with the legislation. If service by email is used, the person serving the document will need to provide proof that the document sent by email was sent to the email address provided by the other party. Satisfactory proof may include a print out or screen shot of:*

- o RTB 51 – Address for Service or other document that sets out the party's email address for service;*
- o the sent item, including the email address the item was sent to;*
- o a confirmation of delivery receipt;*
- o a response to the email by the party served;*
- o a read receipt confirming the email was opened; or*
- o other documentation to confirm the party has been served.*

As I had informed both parties during the hearing, I would verify whether the tenants did in fact provide an email address for service during the last hearing held on August 25, 2022 by listening to the audio recording after the hearing.

I have listened to the audio recording in its entirety, which lasted one hour and fifty-six minutes, and twenty-five seconds. Although the landlord's recollection was that the tenants had provided their email address for service of documents, at no time during the previous hearing did the tenants do so. The tenants confirmed their email address at the end of the hearing for the purposes of receiving a copy of the decision from the RTB. The tenants did not provide an email address during the hearing to the landlord for the purpose of service of documents.

As noted above, the requirement for email service in accordance with sections 88 of the Act, and section 43(1) of the *Regulation* is that the document must be sent to an email address provided for service by the person who is being served. RTB Policy Guideline #12 clearly states that "If no email address for service has been provided, then this method of service should not be used."

In this case, I find that the tenants did not provide an email address to the landlord for service of documents during the previous hearing. Furthermore, the landlord did not provide any evidence to support that the tenants had ever provided an email address to the landlord for the specific purpose of service. Although the landlord provided a signed proof of service, the tenants dispute being served with the 10 Day Notice in a manner that complies with section 88 of the Act. I note that the Proof of Service submitted in evidence only includes confirmation by the tenants that they were served with a copy of the Proof of Service document on October 18, 2022, and not a copy of the 10 Day Notice itself.

In light of the evidence and testimony before me, I am not satisfied that the landlord had provided sufficient evidence to support that the tenants were properly served with the 10 Day Notice in a manner required by section 88 of the *Act* and section 43(1) of the *Regulation*. On this basis, I dismiss the landlord's application for an Order of Possession, and the 10 Day Notice dated October 13, 2022 is hereby cancelled, and is of no force or effect. The tenancy is to continue until ended in accordance with the *Act*.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was not successful with their application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application. The landlord must bear the cost of this filing fee.

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: February 21, 2023

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Residential Tenancy Branch