



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, MNDL, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 2:05 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. Landlords TZ (the landlord) and AZ attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The substitute service decision dated March 23, 2021 states:

I order 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 this order. If possible, the landlord should provide a read receipt confirming the e-mail was opened and viewed by the tenant.

### Conclusion

The landlord is granted an order for substituted service. The landlord may serve the tenant the Application for Dispute Resolution, with supporting documents and written

evidence, along with a copy of this substituted service decision, to the tenant's e-mail address as set out above.

The landlord affirmed he served the application and a copy of the substitute service decision by email on March 26, 2021 at 10:01 am. The landlord served the evidence by sending the tenant a link to a virtual drive on June 17, 2021. The landlord submitted into evidence a document indicating:

[tenant]

Please find attached the following:

1. Notice of Dispute Resolution Proceeding.
2. Substitute Service decision.
3. Landlord's application provided to service BC, along with copies of all emails.
4. Respondent instructions for Dispute Resolution.
5. Dispute Resolution Fact Sheet.

Section 89(1) of the Act states:

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.

Rule of Procedure 3.5 states:

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Residential Tenancy Branch Policy Guideline 12 states:

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the

Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

I find the landlord failed to prove service of the application in accordance with section 89 of the Act and the substitute service decision, as the document submitted is not a print-out of the email or a confirmation of delivery receipt. The document is a partial copy of an email and it does not indicate the email address used by the landlord to serve the application. The landlord must prove service of the application to the tenant's email address recorded on the cover page of the substitute service decision.

Based on the foregoing, I dismiss the landlords' application for a monetary order with leave to reapply. Leave to reapply is not an extension of timeline to apply.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application.

For the purpose of educating the landlords, I note that section 89(1) of the Act does not authorize service of evidence by sending a link to a virtual drive.

#### Conclusion

I dismiss the landlords' application for a monetary order with leave to reapply

I dismiss the landlords' application for an authorization to recover the filing fee without 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: August 20, 2021

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Residential Tenancy Branch