



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nacel Properties LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on April 21, 2021 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- a monetary order for damage or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on October 25, 2021 as a teleconference hearing. Only the Landlord's Agent L.H. attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord's Agent and I were the only persons who had called into this teleconference.

The Landlord's Agent testified that the Tenant did not provide the Landlord with their forwarding address at the end of the tenancy. As such, the Landlord's Agent sent a copy of the Notice of Hearing and documentary evidence package to the Tenant by email on May 3, 2021. The Landlord's Agent stated that the email was the preferred mode of communication between the parties throughout the tenancy.

The Landlord's Agent confirmed that the Tenant did not provide the Landlord the email address used as an address for service by the Tenant. Furthermore, the Landlord's Agent confirmed that the Tenant did not acknowledge receipt of the Notice of Hearing.

Preliminary Matters - Service

According to Section 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.

With respect to email being used for service of documents the parties should be aware;

According to Residential Tenancy Regulation Section 43 (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.

According to the Residential Tenancy Policy Guideline 12;

Any applicant for dispute resolution must provide an address for service. This could be a home, business or other address that is regularly monitored. The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

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. A person who does not regularly check their email should not provide an email address to the other party for service purposes.

A tenant or landlord must provide to the other party, in writing, the email address to be used. There is no prescribed form for doing so, but parties may want to use RTB-51 - "Address for Service" form and provide it to the other party.

If there has been a history of communication between parties by email, but a party has not specifically provided an email address for service purposes, it is not advisable to use email as a service method. If no other method of service is successful, a party may apply for a substituted service order (RTB-13 - Application for Substituted Service), asking for an order allowing service by email, and provide evidence of a history of communication between the parties at that email address. Parties may face delays or risk their application being dismissed if service is not effected in accordance with the legislation.

If an email address given for the purposes of serving documents changes at any time, the onus is on the party to ensure an updated address is provided to the other party, or that the other party is advised that it is no longer acceptable to serve documents at the email address provided. If such notice is received, email service is no longer a method of service available to serve documents and another method of service set out in the legislation must be used instead.

In this case, I accept that the Tenant did not specifically provide the Landlord with their email address for service purposes. As such, I find that the Landlord did not serve the Tenant with the Notice of Hearing in accordance with Section 89 of the *Act*. I find that the Landlord's Application is dismissed WITH leave to reapply.

The Landlord is at liberty to apply for substituted service should they not be able to serve the Tenant by other means set out in Section 89 of the *Act*.

Conclusion

The Landlord did not serve the Notice of Hearing to the Tenant in accordance with Section 89 of the *Act*. As such, the Landlord's Application is dismissed WITH leave to reapply. Leave to reapply does not extend any statutory timelines.

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: October 25, 2021

Residential Tenancy Branch