



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prompton Real Estate Services
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDL-S, MNRL-S, FFL**

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (the "agent") attended the hearing and was 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 agent and I were the only ones who had called into this teleconference.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that she was not recording this dispute resolution hearing.

The agent confirmed the landlord's email address for service of this decision.

Preliminary Issue- Service

The agent testified that the tenants were served the landlord's application for dispute resolution via email. The July 23, 2021 serving email was entered into evidence. The agent testified that the landlord did not have written authorization to serve the tenants via email. An Application for Substituted Service was entered into evidence by the landlord but was not filed with the Residential Tenancy Branch. A Substituted Service Decision was not rendered. Authorization to serve via email, pursuant to section 71 of the *Act*, was not granted.

Section 89 of the *Act* sets out the approved methods of service for applications for dispute resolution as follows:

- 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.

Section 43(2) of the Regulation to the Residential Tenancy Act states:

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.

Residential Tenancy Guideline #12 states:

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.

I find that the landlord has not proved, on a balance of probabilities, that the tenants authorized the landlord to serve them via email. Therefore, pursuant to section 43(2) of the *Regulation* and Policy Guideline 12, the landlord was not permitted to serve the tenants with this application for dispute resolution via email.

Regular use of email to communicate between the parties may be a ground for a substituted service order, which the landlord may apply for in a future application. I note that filing an application for substituted service is different than uploading an application for substituted service into evidence. I find that the landlord was not granted authorization to serve via email under section 71 of the *Act* as no substituted service application was filed and no substituted service decision was rendered. The landlord's application is dismissed, with leave to reapply, for failure to prove service in accordance with section 89 of the *Act*.

I notified the agent that if the landlord wished to pursue this matter further, the landlord would have to file a new application. I cautioned the agent to be prepared to prove service at the next hearing, as per section 89 of the *Act*. I informed the agent that the landlord could apply for a substituted service order pursuant to section 71 of the *Act*, if the landlord had sufficient evidence to do so. I informed the agent that if the landlord did not have the tenants' forwarding address, the landlord could hire a skip tracer to locate the tenants.

Conclusion

The landlord's application is 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: January 24, 2022

Residential Tenancy Branch