



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NYMYX ASSET MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT

This matter proceeded by way of an ex parte Direct Request Proceeding pursuant to section 38.1 of the Residential Tenancy Act (the Act) and dealt with an Application for Dispute Resolution filed by the Tenants seeking a monetary order for the return of a security deposit and to recover the filing fee.

The Tenants submitted a signed Proof of Service Tenant Notice of Direct Request Proceeding which declares that they served the Landlord with the Notice of Dispute Resolution Proceeding and supporting documents by email on December 11, 2021. A copy of the email confirming the email address used, the date of service, and the attachments to the email was submitted in support.

However, I note that on January 5, 2022, the Tenants were granted an order for substituted service by email. The order confirms the Tenants were permitted to serve the Landlord via email. The order requires the Tenants to serve the Notice of Dispute Resolution Proceeding and supporting documents, along with a copy of the substituted service decision, to the Landlord's e-mail address. The order also states:

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

Section 89 of the Act and section 43 of the Residential Tenancy Regulation (the Regulation) confirm that an application for dispute resolution may be served on a respondent using an email address provided by the respondent for service of documents.

Policy Guideline #49 confirms a tenant must provide proof that the Notice of Dispute Resolution Proceeding and supporting documents were served in accordance with the Act and the Regulation. In addition to completing a Proof of Service Notice of Direct Request Proceeding, a landlord must provide sufficient proof of service by email, which is described in Policy Guideline #49 as follows:

A copy of the outgoing email showing the email address used, the date the email was sent, and any attachments included in the email,

and

RTB 51 – Address for Service or other document that sets out the party’s email address for service

In this case, although the Tenants submitted the Proof of Service Notice of Direct Request Proceeding as required under Policy Guideline #49, they were not supported by sufficient evidence that the email address to which the documents were sent was provided by the Landlord for the purpose of serving documents. In other words, *at the time the documents were sent*, the Tenants had not been provided with an email address to be used for the purpose of giving or serving documents. Therefore, the Tenants did not have the ability to serve the Landlord by email on December 11, 2021.

Subsequently, on January 5, 2022, the Tenants were granted an order for substituted service on the Landlord by email. However, I find there is insufficient evidence before me to confirm the Tenants served the substituted service decision, and the Notice of Dispute Resolution Proceeding and supporting documents on the Landlord in accordance with the order. As stated in the adjudicator’s decision, such evidence could have included a “print-out of the sent item, a confirmation of delivery receipt, or other documentation”.

In summary, I find there is insufficient evidence before me to conclude that, at the time the documents were sent to the Landlord by email on December 11, 2021, the Landlord had provided the Tenants with an email address for service of documents in accordance with the Act, the Regulation, and Policy Guideline #49.

Further, I find the Tenants did not comply with the order for substituted service issued on January 5, 2022, by providing sufficient evidence to support a finding that the order for substituted service, the Notice of Dispute Resolution Proceeding, and supporting documents were served on the Landlord after the order was granted.

Considering the above, I order that the Tenants' request for an order granting recovery of a security deposit is dismissed with leave to reapply. This is not an extension of any time limit established under the Act.

As the Tenants have not been successful, I order that the Tenants' request to recover the filing fee is dismissed 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: January 27, 2022

Residential Tenancy Branch