



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, OLC, LRE, PSF, MNDCT, RR, ERP, OPT, AS

Introduction

This hearing was scheduled for 1:30 p.m. on September 27, 2022, via teleconference call, to deal with a tenant's application for cancellation of a One Month notice to End Tenancy for Cause ("1 Month Notice") among several other remedies.

The tenant appeared at the hearing; however, there was no appearance on part of the landlord. Since the landlord was not in attendance, I explored service of hearing materials upon the landlord.

The tenant testified that she sent the proceeding package to the landlord via email on September 2, 2022. I asked the tenant whether she had the landlord's consent or agreement to serve documents to him by email to which the tenant stated she did not. I asked the tenant whether the landlord responded to the email to which the tenant stated the landlord did not.

The tenant stated she then left a copy of the entire package, plus evidence, on the table in the rental unit two weeks before the hearing. The tenant stated the landlord frequently enters the rental unit.

Section 59 of the Act requires that an applicant serve the respondent with the proceeding package within three days of receiving the proceeding package from the Residential Tenancy Branch and section 89(1) sets out the tenant's required methods of service. Where a respondent does not appear for the hearing, the applicant bears the burden to prove service occurred in a manner that complies with the Act.

Section 89(1)(f) permits service of an Application for Dispute Resolution by "any other means of service provided for in the regulations."

Section 43 of the Regulations permits:

(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.

[My emphasis underlined]

In keeping with section 89(1)(f) of the Act and section 43(2) of the Regulations, Residential Tenancy Branch Policy Guideline 12: *Service provisions*, page 4, provides information pertaining to service by email, as follows:

Email service

- o 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.

[My emphasis underlined]

In this case, I find I am unsatisfied that the landlord had given the tenant an email address specifically for the purposes of being served documents. Also, the tenant did not obtain a Substituted Service order authorizing service by email. As such, I find I am unsatisfied that the service requirements of section 89(1) were met and I declined to hear this case further.

On another notice, leaving documents on a table in the rental unit is not a permissible way to serve a proceeding package or evidence. Evidence is to be served in accordance with section 88 of the Act.

Being unsatisfied the landlord was served with the hearing materials, **I dismiss the tenant's application with leave to reapply.** It is important to note that this does not extend any applicable time limit under the Act.

Since the landlord was not served properly with the hearing documents I did not admit or give further consideration to the tenant's documentary evidence. Accordingly, I am unable to determine whether a Notice to End Tenancy complies with the form and

content requirements of section 52 of the Act was served upon the tenant and **I do not provide the landlord with an Order of Possession** pursuant to section 55(1) of the Act. Should the landlord seek an Order of Possession against the tenant he is may make a Landlord's Application for Dispute Resolution.

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: September 28, 2022

Residential Tenancy Branch