

Decision

Dispute Code: SS

Introduction

The landlord(s) apply for substituted service of the application for dispute resolution and notice of hearing (the “hearing package”) and any accompanying documents. I considered the application on an ex parte basis.

Issue to be decided

- Whether the substituted service requested is likely to result in the tenants’ knowledge of the hearing and any documents accompanying the hearing package.

Background and Evidence

In their application the landlord(s) state that the hearing package was sent to the tenants by way of registered mail to the forwarding address provided by the tenants. Subsequently, the mail was returned and stamped “Unclaimed.” The landlord(s) seek to place an advertisement in a newspaper which serves a community within which the landlord(s) understand “the tenants may be living.” Such an advertisement would serve to inform the tenants of “the time of the hearing and the phone number to call, and leaving my name and contact information so that [the tenants] may contact me to receive the hearing documents.”

Analysis

Section 71 of the Act speaks to **Director’s orders: delivery and service of documents**, and provides in part as follows:

71(1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 *[how to give or serve documents generally]* and 89 *[special rules for certain documents]*;

Under **Part 6 – General Matters, Division 1** of the Act addresses **How to Give or Serve Documents**. Section 88 of the Act speaks to **How to give or serve documents generally**, while section 89 of the Act addresses **Special rules for certain documents**. Specifically, section 89 of the Act provides 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]*.

As earlier noted, information included in the application indicates that the hearing package was sent by registered mail to the forwarding address provided by the tenants. This method of service complies with the provisions of section 89(1)(d) the Act, as above.

Despite the return of the above registered mail to the landlord(s) with a stamp "Unclaimed," section 90 of the Act provides that a document given or served in accordance with section 89 of the Act is deemed to be received "on the 5th day after it is mailed."

Further, I note in the landlord(s)' application the uncertainty around whether or not the tenants presently reside in the area served by the subject newspaper:

I have been told that the [tenants] may be living in [name of town].

Following from the above, I find that the method of substituted service requested by the landlord(s) is insufficiently likely to result in the tenants' knowledge of the hearing and any documents accompanying the hearing package.

Conclusion

I find that the parties to be served are able to be served by a method permitted under the Act.

I hereby dismiss the landlord(s)' application for the method of substituted service requested.

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*.

DATE: January 28, 2011

Residential Tenancy Branch