



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes SS

Introduction

An Application for Substituted Service was received from the landlords' lawyer on February 27, 2012. In addition to written submissions made at the time of filing the application an ex-parte hearing took place via telephone call on February 28, 2012.

This Application to Substituted Service pertains to service of hearing documents for an application for an early end of tenancy and Order of Possession filed under file no. 246682 and as well as any future monetary claim against the tenants.

Background and Evidence

The landlords' lawyer submitted evidence that a process server attended the property on February 27, 2012 for purposes of serving documents upon the tenants. The process server provided a sworn affidavit that when he attended the property it appeared as though somebody was in the rental unit but did not answer the door. The process server was able to post documents to the door of the rental unit.

The landlords' lawyer is requesting that the tenants be served with hearing documents by giving the hearing documents to the criminal defence counsel for the male tenant. Upon enquiry, the landlords' lawyer submitted that:

- the male tenant's defence counselor has previously communicated with the landlords' lawyer with respect to electrical safety issues at the residential property;
- she has spoken to the defence counselor about serving of hearing documents upon him instead of the tenants and the defence counselor responded that the landlords should serve the tenants with the hearing documents as he has not been retained to give legal advice to the tenant; however, he would accept copies of the documents served upon the tenants;
- she is of the understanding that both named tenants will be charged criminally in the near future with respect to a marihuana grow operation at the property and that the same defence councilor will represent both named tenants; and,

- the defence councillor's assistant is a personal friend of both named tenants and will likely communicate with the tenants immediately after receiving the hearing documents.

The landlords' lawyer acknowledged that posting documents on the door of the rental unit has been accomplished recently but explained that if hearing documents have to be posted then there will be a delay in the hearing date.

Analysis

Where a landlord seeks to end a tenancy and obtain an Order of Possession, section 89(2) of the Act provides that a landlord may serve the tenant with an Application for Dispute Resolution in the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

An order authorizing substituted service is provided by way of section 71(1) of the Act. Residential Tenancy Policy Guideline 12: *Service Provisions* and Fact Sheet RTB-119: *How to Serve Documents* provide information about requests for substituted service. These publications provide that a request for substituted service may be made at the time of filing an Application for Dispute Resolution or later where the applicant can demonstrate that reasonable efforts to serve the documents using one of the options under the Act have been made and these types of service have not been possible.

Policy Guideline 12 also provides that in order to succeed in obtaining an order for substituted service, the applicant must demonstrate that the substituted service is likely to result in the party being served having actual knowledge of what is being served.

Based upon the Affidavit of the process server I find the landlords' are able to serve an application for an Order of Possession in a manner provided by section 89(2)(d) and I was not provided evidence that the tenants would not receive registered mail, another acceptable method of service, at the rental unit.

Furthermore, the landlords' lawyer has not demonstrated that the male tenant's criminal defence counsel has agreed or will serve hearing documents upon both tenants.

In light of the above, I deny the applicant's request for substituted service of an Application for Dispute Resolution for an Order of Possession. As a monetary claim has not yet been determined or filed it is premature to grant an order for substituted service for a possible future monetary application.

Conclusion

Based on the above, I find deny the request for an order for substituted service. The landlords are required to serve hearing documents in a manner that complies with the requirements of the Act and Rules of Procedure.

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: February 28, 2012.

Residential Tenancy Branch