



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION ON APPLICATION FOR SUBSTITUTED SERVICE**

Dispute Codes      SS

### Introduction

This Decision is made as a result of an application filed by the landlord for an order permitting the landlord to serve the Notice of Hearing and an Application for Dispute Resolution upon the tenant in a method other than required under the *Residential Tenancy Act*. The Application for substituted service was presented with an Affidavit sworn by a legal assistant for a lawyer who acts for the landlord. The legal assistant also provided affirmed testimony in a hearing, which also included stated facts by the landlord's counsel by conference call, which were not taken under oath.

### Issue(s) to be Decided

Is the landlord entitled to an order allowing the landlord to serve documents in a method other than required under the *Residential Tenancy Act*?

### Background and Evidence

The sworn affidavit of the legal assistant states that the landlord and the tenant have communicated by email, and the affidavit exhibits copies of emails to substantiate that fact. The first of those emails is dated May 22, 2012. The parties continued to communicate by email on May 25, 2012, May 31, 2012, June 12, 2012 and July 12, 2012 and copies of those emails have also been provided. The email dated May 25, 2012 from the tenant states that the tenant is living in his truck and the tenant is struggling just to stay warm and dry and find food to eat. The email dated July 12, 2012 from the tenant is very short and states that the tenant is "working 24/7." None of the emails provides an address for the tenant.

The emails from the tenant come from 2 different email addresses, and the affidavit of the legal assistant states that the tenant has used both of those email addresses. The landlord requests an order that the landlord be permitted to serve the Application for Dispute Resolution and notice of hearing upon the tenant by sending them by email to one or both of the email addresses, and that proof of such service will constitute proper service pursuant to Section 71 of the *Residential Tenancy Act*.

Counsel for the landlord did not give affirmed testimony, but stated that a request for an address was made to the tenant in May, 2012 but has not provided any evidence of a request to the tenant.

### Analysis

The Residential Tenancy Branch Rules of Procedure provide that if a respondent is avoiding service or cannot be found, the applicant may request an order for substituted service, provided that reasonable attempts have been made to serve the respondent. There is no evidence before me that the landlord has attempted to obtain an address of the respondent. Counsel for the landlord had provided oral information that a request for an address was made to the tenant in an email in May, 2012, but a copy of that email was not provided with the application for substituted service. Further, the emails that have been provided as exhibits to the legal assistant's affidavit indicate that in May, 2012 the tenant was residing in his vehicle, and I am satisfied that the email indicates that the tenant had no home or mailing address. The latest email from the tenant is dated July 12, 2012 and states that the tenant is "working 24/7." I find it entirely reasonable to believe that the tenant may have secured an address between May 25, 2012 and the date of the application for substituted service, and I am not satisfied that the landlord has made reasonable attempts to locate an address at which to serve the tenant.

In the event that an address for the tenant is not provided by the tenant, the landlord is at liberty to re-apply for substituted service but must provide evidence of what attempts were made to obtain an address or serve the tenant with documentation.

### Conclusion

For the reasons set out above, the landlord's application for an order for substituted service is hereby dismissed.

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: August 02, 2012.

---

Residential Tenancy Branch