



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, RP

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 66;
- cancellation of the landlord's 1 Month Notice, pursuant to section 47; and
- an order to the landlord to make repairs to the rental unit, pursuant to section 33.

The landlord did not attend this hearing, although it lasted approximately 12 minutes. The two tenants DLL and DAL, attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Service of Tenants' Application

The tenant DAL testified that the tenants did not serve the landlord with their application for dispute resolution. She indicated that it was difficult to get in touch with the landlord, he avoided the tenants' calls, and the tenants had no money to mail the application to the landlord.

Analysis - Service of Tenants' Application

Section 59(3) of the *Act* requires the applicant tenants to serve their application for dispute resolution on the other party, the landlord:

59(3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Section 89 of the Act establishes the following special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution...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 document]...*

Residential Tenancy Policy Guideline 12 states that the application may be served by other methods if certain requirements are met:

ORDERS FOR SUBSTITUTED SERVICE

An application for substituted service may be made at the time of filing the application or at a time after filing. The party applying for substituted service must be able to demonstrate two things:

- that the party to be served cannot be served by any of the methods permitted under the Legislation, and*
- that there is a reasonable expectation that the party being served will receive the documents in that way.*

Section 71 of the Act states that an Arbitrator has the authority to approve that an application be served by way of another service method:

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.

During the hearing, I advised the tenants about the above provisions of the Act and the requirement to serve the landlord with their application. I advised the tenants to contact the Residential Tenancy Branch for further information. I cautioned the tenants that if they intended to submit another application, which they would be required to do if they intended to pursue this relief, to file their application and serve the landlord as soon as possible, given the time limits involved in their application.

The tenants have not served the landlord with their application for dispute resolution, as required by section 59(3) of the *Act*. Accordingly, I advised both tenants during the hearing, that I was dismissing their entire application with leave to reapply.

Conclusion

The tenants' entire application is dismissed with 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 08, 2015

Residential Tenancy Branch

