



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for a Monetary Order for damages to the unit and to recover the filing fee.

The landlord attended the conference call hearing. The tenant did not. The landlord testified that the tenant has vacated and did not provide a forwarding address, and that the address listed on their application is, in fact, the tenant's place of work. The tenant provided testimony that their father left the Notice of Hearing package with a staff at the tenant's place of employment – while the tenant was on leave – with assurance from the staff the tenant would receive it on return from their leave. The landlord testified they did not employ another method to serve the tenant.

Section 89 of the Act states as follows in reference to this type of matter – **emphasis mine**

Special rules for certain documents

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*].

Section 71 states as follows – in respect to an application for Substituted Service.

Director's orders: delivery and service of documents

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*];

(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Section 89 of the Act deliberately operates to lend credibility to the presumption of service if a party is served in accordance with the ways listed. I find the landlord's method of serving the tenant to be sufficiently inconclusive that the tenant has been duly notified of the action against them, and therefore, unreliable – and not within the deliberate and strict provisions established in the Act. As a result, I am not satisfied the tenant has knowledge of this matter and the landlord's claim. Therefore, **I dismiss** the landlord's application, but I do so, with leave to reapply. None of the potential merits of this application were heard.

Conclusion

The landlord's 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: September 15, 2015

Residential Tenancy Branch