



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes SS

Introduction

This hearing dealt with an ex parte application by the landlord for an order for substituted service pursuant to section 71(1) of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order for substituted service of their Monetary Order in a manner different than what is required under section 88 of the *Act*?

Background and Evidence

The landlord entered into a tenancy with the tenant, which had come to an end on December 15, 2016. The landlord has had a hearing with a Residential Tenancy Branch arbitrator and was awarded compensation from the tenant for unpaid rent and the filing fee. The landlord has stated in their Application for Substituted Service that, upon moving out of the dispute address, the tenant had not formally provided a forwarding address. The landlord also states that they have contacted a process server, but that the process server “refuses to help because ‘I have had problems with him.’” The landlord has now requested to serve the Monetary Order to the tenant by way of e-mail and text message.

The landlord has submitted the following evidentiary material:

- An Application for Substituted Service.

Analysis

This application for the issuance of a substituted service order was made pursuant to section 71 of the *Act*. This section enables me to issue an order that a document may be served by substituted service in accordance with the order, despite the service provisions of sections 88 and 89 of the *Act*. Section 71(2) of the *Act* also enables me to make an order:

- (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*.

Residential Tenancy Guideline #12 deals with the service of documents. With respect to orders for substituted service, the Guideline states:

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 the substituted service is likely to result in the party being served having actual knowledge of what is being served

Under section 89 of the *Act*, a landlord may serve a tenant with a Monetary Order by either personally handing it to the tenant or by sending it by registered mail; however, the tenant has not formally provided any forwarding address and the landlord is not able to locate the tenant.

I have reviewed all documentary evidence and I find that the landlord has not provided any evidence which demonstrates that the tenant would be able to receive the Monetary Order if sent to the e-mail address or to the phone number by text message.

For the above reasons, the landlord's application for substituted service to serve the tenant the Monetary Order by way of e-mail and text message is dismissed, with leave to reapply.

Conclusion

I dismiss the landlord's application for substituted service, 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: February 07, 2017

Residential Tenancy Branch