



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 tenants for an order for substituted service pursuant to section 71(1) of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to an order for substituted service of their Application for Dispute Resolution (the Application) in a manner different than what is required under section 89 of the *Act*?

Background and Evidence

The landlord and the tenants entered into a residential tenancy which came to end in the past year. The landlord and the tenants had been engaged in two previous arbitrations regarding the rental unit when the tenants still lived in the rental unit. The tenants state that the landlord served the tenants with a Two Month Notice to End Tenancy but did not move into the rental unit, which was the stated reason for ending the tenancy on the Notice, and instead rented it to another tenant. The tenants have filed an Application for Dispute Resolution against the landlord to request compensation for loss or other money owed and for the landlord to comply with the *Act*. The tenants state, on their Application for Substituted Service, that they attempted to serve the landlord the Application personally at the landlord's last known residence and found that the landlord's house is "empty of all furniture. The house appears to have been sold and he is no longer residing there."

The tenants have requested to serve the Application for Dispute Resolution, along with supporting documents, to the landlord's email address.

The landlord has submitted the following evidentiary material:

- A Tenant's Application for Dispute Resolution; and
- A Copy of an e-mail exchange between Tenant R.S. and the landlord dated July 26, 2017,

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 tenant may serve a landlord with the Application by either personally handing it to the landlord or by sending it by registered mail; however, the tenants state that they do not currently know where the landlord is residing as the landlord has not provided a forwarding address and is no longer at the address known to the tenants.

Based on the evidence submitted, I find that the tenants have demonstrated that the landlord cannot be served by any of the methods permitted under the legislation.

I have reviewed all documentary evidence and I find that the landlord's e-mail address is still currently active as the most recent e-mail from the landlord was received by the tenants on July 26, 2017.

I further find that it would be reasonable to conclude from this that the landlord would receive the Application for Dispute Resolution and have actual knowledge of the tenant's Application if it is served to the landlord's e-mail address.

For this reason I allow the tenants substituted service of the Application for Dispute Resolution, with supporting documents and written evidence, by e-mail to the landlord at the e-mail address as indicated on page 1 of this decision, which the tenants and the landlord have been using for their communications after the tenancy.

Conclusion

The tenants are granted an order for substituted service. The tenants may serve the landlord the Application for Dispute Resolution, with supporting documents and written evidence, along with a copy of this substituted service decision, to the landlord's e-mail address as set out above.

I order that documents served in this manner have been sufficiently served to the landlord for the purposes of the *Act*, three days after the date that the email is sent by the tenants to the landlord.

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 01, 2017

Residential Tenancy Branch