



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANTAGE WEST REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR

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 and Order of Possession.

The landlord attended the conference call hearing. The tenant did not. The landlord testified that the tenant vacated June 15, 2017 and did not provide a forwarding address. On June 23, 2017 the landlord made their application via the Direct Request process for an Order of Possession and for unpaid rent. The landlord testified that they made an attempt at serving the tenant by registered mail on June 30, 2017 to the address vacated by the tenant 2 weeks earlier and subsequently attempted to serve the tenant by registered mail to an address for the tenant's mother which went unclaimed. The landlord testified they then further personally served the mother at their home 2 weeks before the hearing. The landlord claims the mother told them they would inform their son. 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.

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*].

It must be noted that **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 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 06, 2017

Residential Tenancy Branch