



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

SUBSTITUTED SERVICE DECISION

Dispute Codes SS

Introduction

This is an ex parte Application for Substituted Service (the “Sub Service Application”) made by the Landlords on July 21, 2017. Therefore, no participatory hearing was conducted and there was no requirement for any of the parties to appear for a hearing as the matter was determined based on the Landlords’ written submissions only.

Issues(s) to be Decided

Are the Landlords entitled to an order to serve the Tenant in a manner different than what is required under Section 89(1) of the *Residential Tenancy Act* (the “Act”)?

Background and Evidence

The Landlord writes in the Sub Service Application that the Tenant has vacated the rental unit and has not provided a forwarding address. The Landlords attempted to serve the Tenant to the last known mailing address but provided no supporting evidence as to which address they used.

The Landlords explained that they are unable to serve the Tenant with documents so that the Tenant can be put on notice of the Landlord’s monetary claim for damages to the rental unit.

The Landlords request that they be allowed to serve the Tenant with notice of their monetary claim to the Tenant’s email address as it is the most recent correspondence they have received from the Tenant. The Landlord provided a copy of this email into evidence which is dated May 29, 2017. The author of the email is the Tenant who writes to the Landlord’s email address informing that the email note is the Tenant’s formal

notice to end the tenancy for June 30, 2017. The email note is concluded with the Tenant's name.

Analysis

Section 71 of the Act enables me to issue an order that a document may be served by substituted service in accordance with the order, despite the service provision requirements of Sections 88 and 89 of the Act.

Residential Tenancy Branch Policy Guideline 12 deals with the service of documents. Regarding substituted service, this guideline explains that:

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.*

Under Section 89 of the Act, a landlord may serve a tenant with an Application for Dispute Resolution by sending it by registered mail or by personal service. However, in this instance I am satisfied that the Landlord does not have a reliable mailing address for the Tenant as one was not provided by the Tenant at the end of the tenancy.

In considering whether to grant the Landlords' request for a substituted service order, I take into consideration that it was the Tenant's choice to use email as a way to communicate with the Landlord towards the end of the tenancy, and to use email as a way to serve a formal notice to end the tenancy. The Landlords received that email and are now seeking to use that very same email address to serve documents of their claim to the Tenant.

While the Landlords failed to provide evidence that the parties used email as a form of communication during and post tenancy, because it was the Tenant that sent this email to the Landlords and initiated this form of recent communication, I find there to be no reason why the Landlord should be barred from not using the very same email address

utilised by the Tenant to end the tenancy. As this communication is recent, I accept it is reasonable the Tenant will receive documents in this way.

Conclusion

For the above reasons, I allow the Landlords to serve the Tenant substitutionally by sending her scanned copies of the: Application for Dispute Resolution; the Hearing Package; evidence the Landlord intends to rely upon to prove the claim; and a copy of this Substituted Service Decision.

This must be sent to the Tenant's email address as disclosed on the Landlord's Sub Service Application, which I have also reproduced on the front page of this Substituted Service Decision.

The Landlords must provide sufficient evidence for the participatory hearing that service allowed in this manner has been complied with. However, the Arbitrator conducting the participatory hearing will still need to be satisfied that service has been effected pursuant to this Substituted Service Decision and the provisions laid out in the Act.

The Tenant is not permitted to serve rebuttal evidence to the Landlords by email. If the Tenant wants to submit evidence in response to the Landlord's Application for Dispute Resolution, the Tenant must use the methods of service as outlined in Section 88 of the Act. One of these methods is to serve evidence by mail using the Landlords' mailing address detailed on the Application for Dispute Resolution, which will be served to the Tenant's email address in due course.

This Substituted Service 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: July 27, 2017

Residential Tenancy Branch