



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

Issue(s) to be Decided

Is the tenant entitled to an order for substituted service of their Application for Dispute Resolution in a manner different than what is required under section 89 of the *Act*.

Background and Evidence

The tenant was recently involved in arbitration with the landlords in a hearing on June 14, 2017. The tenant has filed another Application for Dispute Resolution on July 03, 2017, against the landlords for numerous issues, including a request for monetary compensation and to have the security deposit returned to the tenant. The tenant states that they have attempted service of the Application for Dispute Resolution to each of the landlords by hand but the landlords are not at the addresses that the tenant has for them.

On July 6, 2017 the tenant submitted an Application for Substituted Service in which he states that the landlords gave the arbitrator each of their e-mail addresses for service of the decision pertaining to that hearing. An adjudicator with the Residential Tenancy Branch ruled that the tenant's July 6, 2017 Application for Dispute Resolution against the landlords could not be served by way of substituted service. The adjudicator determined that the tenant had not submitted any evidence to show attempts were made to serve the landlords with the Application for Dispute Resolution by way of Canada Post Registered Mail to the addresses provided on the Tenant's Application for Dispute Resolution and that the tenant had not sufficiently demonstrated the landlords could not be served by any of the methods permitted under the legislation.

On July 13, 2017 the tenant re-applied for substituted service, requesting to submit the Notice of Hearing documents, along with evidentiary materials via email to the landlords. The arbitrator found that the tenant had not “taken all reasonable steps to locate and serve the landlord in any method allowed under the *Act*.”

The tenant has made a third Application for Substituted Service on July 31, 2017, and has requested to serve the Application for Dispute Resolution, along with supporting documents, to the landlords’ email addresses as well as to LL N.F.’s Facebook (FB) account.

The tenant has submitted the following evidentiary material:

- A Tenant’s Application for Dispute Resolution;
- Copies of FB messages from LL N.F. all dated in October of 2016;
- A USB stick containing recordings of phone calls between the tenant and another person who the tenant states is LL Y.L (who is not named on this dispute);
- An Application for Substituted Service with evidence submitted on July 13, 2017 containing an e-mail from LL N.F. to the tenant on June 28, 2017 and an e-mail from LL Y.L. from the e-mail address used for LL T.G. discussing the tenancy situation;
- A “Statement of Deliverability” regarding the LL N.F.’s address; and
- An Application for Substituted Service; and

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 an Application for Dispute Resolution by either personally handing it to the landlord or sending it by registered mail.

I have reviewed all documentary evidence and I find that the Statement of Deliverability is signed by a person who is currently residing at the dispute address and they have indicated that they do not have an address for service for LL N.F.

I further find that the e-mail dated May 07, 2017, between LL Y.L. and the tenant establishes that the LL Y.L. informed the tenant that LL. Y.L. and LL. T.G. no longer reside at the address that the tenant has for them.

Based on the evidence submitted, I find that the tenant has demonstrated that the landlords cannot be served by any of the methods permitted under the legislation.

I have reviewed all documentary evidence and I find that the landlords' e-mail addresses are still currently active as the most recent e-mail from the LL.Y.L was received on May 07, 2017 and the most recent e-mail from LL N.F. was received on June 28, 2017.

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

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

The tenants request to serve LL N.F. by FB is dismissed as it is not required.

Conclusion

The tenant is granted an order for substituted service. The tenant may serve the landlords the Application for Dispute Resolution, with supporting documents and written evidence, along with a copy of this substituted service decision, to each of the landlords' respective e-mail addresses as set out above on page 1 of this decision.

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

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