



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION ON APPLICATION FOR SUBSTITUTED SERVICE

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 her Application for Dispute Resolution and Notice of Dispute Resolution hearing documents, along with an order or decision of an Arbitrator, in a manner different than what is required under section 89 of the *Act*?

Background and Evidence

The landlord “NT” (the landlord) seeks leave to be able to serve an Application for Dispute Resolution and Notice of Dispute Resolution hearing documents to the respondent tenant “BS” (the tenant) by way of substituted service in a manner other than the approved methods of service as permitted under the *Act*.

The landlord provided brief written submissions on her Application for Substituted Service. In her Application for Substituted Service, the landlord states that she attempted to communicate with the tenant by way of text message, in which she asked that the tenant provide his forwarding address. The landlord further states that the tenant did not reply to her request, and that she does not know where the tenant lives or works.

The landlord provides that she had attempted service of the Application for Dispute Resolution and Notice of Dispute Resolution hearing documents by way of registered mail addressed to the tenant at the rental unit; however, the registered mail package was returned by Canada Post as the registered mail package was deemed to be unclaimed.

The Application for Substituted Service submitted by the landlord is incomplete, as the landlord has not provided information to clarify the alternative method by which she wishes to attempt substituted service on the tenant, and further, the landlord does not provide any information to demonstrate whether she can demonstrate that the tenant will receive the Application for Dispute Resolution and Notice of Dispute Resolution hearing documents, as she has not completed the Application for Substituted Service by providing the alternate method by which she wishes to attempt service.

The landlord has submitted the following evidentiary material:

- A Landlord's Application for Dispute Resolution;
- An Application for Substituted Service; and
- A copy of a Canada Post registered mail package, sent to the tenant at the address of the rental unit, which was returned due to the item being deemed unclaimed.

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 provision requirements 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 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 either personally handing it to the tenant or by sending it by registered mail; however, the landlord contends that the tenant has not provided any forwarding address, and therefore, is unable to serve the Application for Dispute Resolution and Notice of Dispute Resolution hearing documents to the tenant in a manner permitted under section 89 of the *Act*.

I have reviewed all documentary evidence and find that the landlord has not provided a completed Application for Substituted Service. The landlord has not completed the section of the Application for Substituted Service form in which she is to detail the alternate method by

which she wishes to attempt substituted service on the tenant to serve the Application for Dispute Resolution and Notice of Dispute Resolution hearing documents.

Additionally, as the landlord has not provided the alternate method by which she seeks leave to undertake substituted service, the landlord has left blank the corresponding section of the application form, in which she is required to demonstrate why she determines that there would be a reasonable expectation that the respondent party being served in a substituted fashion will receive the documents and have actual knowledge of the landlord's application for dispute resolution and supporting evidence if it is served in a manner other than the approved methods of service permitted under the Act.

For the reasons cited above, I find that the landlord has not provided a completed Application for Substituted Service which satisfies the criteria for substituted service as set out in section 71 of the Act and in Residential Tenancy Branch Policy Guideline 12. Based on the foregoing, I dismiss the landlord's application for substituted service, 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: November 02, 2018

Residential Tenancy Branch