



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OLC, CNR, FFT**

### Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act;
2. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord attended the hearing at the appointed date and time and provided affirmed testimony. The Tenants, DK and AG, did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that he was not recording this dispute resolution hearing.

The Landlord testified that he slid the 10 Day Notice under the Tenants' door on November 3, 2021. Pursuant to Section 88 of the Act, the 10 Day Notice, that is required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (j) by any other means of service provided for in the regulations.

As the Landlord did not serve the Tenant in one of the above ways, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure that parties know the case being made against them, are given the opportunity to reply, and have the right to have their case heard by an impartial decision maker: *AZ Plumbing and Gas Inc. (Re)*, 2014 CanLII 149849 (BC EST) at para. 27. Procedural fairness requirements in administrative law are not technical, but rather functional in nature. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 (CanLII) at para. 65. I find that service was not effected and it would be administratively unfair to proceed on the Landlord's application against the Tenants. I cancel the Landlord's application because of improper service.

### Issues to be Decided

1. Are the Tenants entitled to an Order for the Landlord to comply with the Act, regulations and tenancy agreement?
2. Are the Tenants entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

This periodic tenancy began on February 15, 2021. Monthly rent is \$1,600.00 payable on the fifteenth day of each month. A security deposit of \$800.00 and a pet damage deposit of \$800.00 were collected at the start of the tenancy and are still held by the Landlord.

The Landlord served the 10 Day Notice, by sliding the document under the Tenants' door on November 3, 2021. The Tenants applied for dispute resolution, but did serve the Notice of Dispute Resolution Proceeding package on the Landlord and did not attend this hearing. The Landlord called into the RTB and was given the call in details for this hearing.

The Landlord testified that he did not receive a rental payment on September 15, 2021. He went to the rental unit everyday, and Tenant AG relayed stories that he had no work, his back was injured, and he had broken up with his girlfriend. AG gave the Landlord \$600.00. The Landlord has not received the \$1,000.00 balance owing for September's rent. The Landlord also has not received rental payments for October 15, 2021, November 15, 2021, December 15, 2021 or January 15, 2022.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Residential Tenancy Policy Guideline #12 – Service Provisions helps RTB staff and the public address issues in regard to service of documents. This guideline states in part:

*The Act and its regulations establish the ways in which documents pertaining to a tenancy or a dispute resolution proceeding are required or permitted to be given or served on a party. Documents include the tenancy agreement, notices, applications for dispute resolution, decisions, orders, summons to testify and evidence. ...*

*The purpose of serving documents under the Legislation is to notify the parties named in the dispute of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding, or a review. Another purpose of providing the documents is to allow the other party to prepare their response for the hearing and gather documents they may need to serve and submit as evidence in support of their position.*

...

## **5. Service of Documents Generally**

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***by attaching a copy of the document to a door or other conspicuous place at the address where the person to be served resides at the time of service***

*If this method is used, the person attaching the document should make sure that the door or conspicuous place belongs to the person's residence, and that the document will be readily seen by the person entering or leaving the residence.*

*A conspicuous place is one that is clearly visible and likely to attract notice or attention. Placing a copy of the document under the door is not recognized by the Legislation. (emphasis mine)*

The Landlord slid the 10 Day Notice under the Tenants' door and this is not a proper method of service for any document. As the Landlord served the document improperly, I cancelled the 10 Day Notice.

RTB Rules of Procedure 7.3 states:

**7.3 Consequences of not attending the hearing:** If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Tenants did not attend this dispute resolution hearing. In the absence of any evidence or submissions from the Tenants or their agent, I order their application dismissed with leave to re-apply. I make no findings on the merits of the matter.

### Conclusion

The Landlord's 10 Day Notice is cancelled due to improper service.

The Tenants' application is dismissed with leave to re-apply. This dismissal does not extend any time limitation that may apply under the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 27, 2022

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Residential Tenancy Branch