



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, OPR, MNRL**

Introduction

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

1. An Order of Possession for Unpaid Rent further to issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 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, FS, and Friend, BP, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenants 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 served the 10 Day Notice on the Tenant on November 2, 2021 by placing the document in the Tenant's mailbox. The Landlord testified that he observed the Tenant's father take the 10 Day Notice out of the mailbox. I find that the 10 Day Notice

was deemed served on the Tenant on November 5, 2021 pursuant to Sections 88(f) and 90(d) of the Act.

The Landlord served the Notice of Dispute Resolution Proceeding package for this hearing to the Tenant by leaving a copy in the Tenant's mailbox (the "NoDRP package"). Again the Landlord testified that he witnessed the son take the NoDRP package out of the mailbox. Pursuant to Section 89 of the Act, an application under Section 55 of the Act for dispute resolution, when required to be given to one party by another, must be given to the Tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (f) by any other means of service provided for in the regulations.

As the Landlord did not serve the Tenant with the NoDRP package or his evidence in one of the above-listed ways, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure parties know the case against them, parties are given an opportunity to reply to the case against them and to have their case heard by an impartial decision-maker: *AZ Plumbing and Gas Inc.*, BC EST # D014/14 at para. 27. Procedural fairness requirements in administrative law are functional, and not technical, in nature. They are also not concerned with the merits or outcome of the decision. 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 at para. 65. I find that service of the NoDRP package was not effected and it would be administratively unfair to proceed on the Landlord's application against the Tenant. I dismiss all of the Landlord's claims with leave to re-apply.

For the benefit of the Landlord, the Landlord may wish to discuss with an Information Officer at the RTB the options available to him to properly end a tenancy and service means. An Information Officer can be reached at:

5021 Kingsway
Burnaby, BC
Phone: 250-387-1602
Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Conclusion

The Landlord's application is dismissed with leave to re-apply due to improper service.

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: February 24, 2022

Residential Tenancy Branch