



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNR-DR, OPR-DR, FFL**

Introduction

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

1. An Order of Possession for 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 Landlords 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 Landlords and I were the only ones who had called into this teleconference. The Landlords were given a full opportunity to be heard, to make submissions, and to call witnesses.

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

The Landlords personally served the 10 Day Notice on the Tenants on November 20, 2021. The Landlords provided a proof of service document stating this personal service was witnessed. I find that the 10 Day Notice was served on the Tenants on November 20, 2021 pursuant to Section 88(a) of the Act.

The Landlords testified that they served the Notice of Dispute Resolution Proceeding package for this hearing by mail and by putting the package through a mail slot on the Tenants' door (the "NoDRP package") on December 8, 2021. The Landlords did not say that the mail service used was registered mail and no Canada Post tracking numbers were uploaded in the Landlords' evidence package. Pursuant to Section 89(2) of the Act, an application for dispute resolution, when required to be given to one party by another, must be given 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 Landlords did not serve the Tenants in one of the ways stated in the Act, 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 Landlords' application against the Tenants. I dismiss all of the Landlords' claims with leave to re-apply.

For the benefit of the Landlords, the Landlords may wish to discuss with an Information Officer at the RTB the options available to them to properly serve a NoDRP package.

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 Landlords' application is dismissed in its entirety with leave to re-apply as service of the NoDRP package was not effected.

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: March 22, 2022

Residential Tenancy Branch