



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, FFT**

Introduction

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

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, BT, and the Tenant, RP, and Advocate, NM, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

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

BT testified that they attempted to personally serve the Tenant with the Two Month Notice on February 28, 2022. BT stated after knocking, no one answered the door, so they went to the other side of the rental unit and slid the Two Month Notice under the laundry room door. Personal service means actually handing a copy of the document to the person being served. Service by posting means attaching a copy to a door or other conspicuous place at the address at which the tenant resides. 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 as a permissible way of serving a legal document.

The Landlord uploaded their evidence the day before this hearing. The Landlord's evidence deadline was June 26, 2022. The Landlord testified that they did not serve their evidence on the Tenant. The Tenant stated they could see that the Landlord had uploaded evidence on the RTB website portal, but they did not have access to it. I find that the Landlord did not serve their evidence on the Tenant.

Pursuant to Section 88 of the Act, the Two Month Notice and evidence, 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 Two Month Notice and evidence on 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 for either the Two Month Notice or the Landlord's evidence and it would be administratively unfair to proceed on the Landlord's notice against the Tenant. I cancel the Landlord's Two Month Notice because of improper service.

The Tenant was issued the Notice of Dispute Resolution Proceeding package for this hearing on March 22, 2022 (the "NoDRP package"). The instructions from the RTB were to serve the NoDRP package by no later than March 25, 2022. The Tenant testified that she served the Landlord with the NoDRP package for this hearing on May 23, 2022 by Canada Post registered mail. The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package from the Tenant. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on May 28, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's Two Month Notice?
2. Is the Tenant 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.

The parties confirmed that this periodic tenancy began on April 3, 2013. Monthly rent is \$770.00 payable on the first day of each month. A security deposit of \$375.00 was collected at the start of the tenancy and is still held by the Landlord.

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.

Due to improper service of the Two Month Notice, I cancel the Landlord's Two Month Notice, and the tenancy will continue until ended in accordance with the Act.

As the Tenant is successful in her claim, she is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

For the benefit of the Landlord and the Tenant, both may wish to discuss with an Information Officer at the RTB the options available to them to properly end a tenancy and to properly serve legal documents on the other party. An Information Officer can be reached at:

5021 Kingsway
Burnaby, BC
Phone: 250-387-1602 / 1-800-665-8779
Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Conclusion

The Tenant's application to cancel the Landlord's Two Month Notice is granted.

The Tenant may withhold \$100.00 from next month's rent to recover her application filing fee in this matter.

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: July 04, 2022

Residential Tenancy Branch