



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNSDB-DR, FFT**

### Introduction

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

1. An Order for the return of the security deposit that the Landlord is holding without cause pursuant to Section 38 of Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Tenants attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord 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 Tenants and I were the only ones who had called into this teleconference. The Tenants were given a full opportunity to be heard, to make submissions, and to call witnesses.

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

The RTB issued the Notice of Dispute Resolution Proceeding package for this hearing on January 18, 2022 (the "NoDRP package"). The Tenants testified that they served the Notice of Dispute Resolution Proceeding package for this hearing by bringing a copy to the residence of the Landlord and posting it on their front door, and they left a copy in the mailbox of the rental unit. Pursuant to Section 89 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 person;*
- (b) *if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) *by sending a copy by 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 registered mail to a forwarding address provided by the tenant;*
- (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 (e.g.: by email if agreed/instructed by the Landlord).*

As the Tenants did not serve the Landlord the NoDRP package in accordance with Section 89, 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 Tenants' application against the Landlord. I dismiss all of the Tenants' claims with leave to re-apply.

### *Forwarding Address*

The Tenants testified that they served their forwarding address to the Landlord by email. Section 43 of the *Residential Tenancy Regulation* (the "Regulation") outlines other means of giving or serving documents. RTB Policy Guideline #12-Service Provisions outlines 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. Policy Guideline #12 specifically talks about service by email, it states:

*At any time, a tenant or landlord may provide an email address for service purposes. By providing an email address, the person agrees that important documents pertaining to their tenancy may be served on them by email. A person who does not regularly check their email should not provide an email address to the other party for service purposes. A tenant or landlord must provide to the other party, in writing, the email address to be used. There is no prescribed form for doing so, but parties may want to use RTB-51 - "Address for Service" form and provide it to the other party.*

Pursuant to Section 88 of the Act, the Tenants' forwarding address 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 (e.g.: by email if agreed/instructed by the Landlord).*

The Tenants said they had an email from the Landlord instructing them that they could serve documents by email, but that email was not uploaded in their documentary evidence. I find that service of their forwarding address by email is not proven as a valid method of service for this legal information.

As the Tenants were not successful in their claim, I do not grant them recovery of the application filing fee.

For the benefit of the Tenants, they may wish to discuss with an Information Officer at the RTB the options available to them to properly serve legal documents for this matter. 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

Due to ineffective service, the Tenants' application is dismissed with leave to re-apply.

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: September 15, 2022

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Residential Tenancy Branch