



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, MNDL-S, MNDCL-S, FFL**

Introduction

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

1. A Monetary Order to recover money for unpaid rent – holding security and/or pet damage deposit pursuant to Sections 38, 62 and 67 of the Act;
2. A Monetary Order for the Tenant to pay to repair the damage that they, their pets, or their guests caused during their tenancy pursuant to Sections 38 and 67 of the Act;
3. An Order for compensation for the Landlord's monetary loss or other money owed - holding security and/or pet damage deposit pursuant to Sections 38 and 67 of the Act; and,
4. 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 Tenant 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 stated that he served the Tenant with the Notice of Dispute Resolution Proceeding package and his evidence for this hearing by email on February 10, 2022 (the “NoDRP package”). The Landlord said they did not have agreement between the parties to be allowed to serve legal documents by email. 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.

As the Landlord did not serve the Tenant with the NoDRP package in one of the permitted ways set out in Section 89 of 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 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.

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 Landlord testified that this tenancy began as a fixed term tenancy on October 1, 2021. The fixed term was to end on September 30, 2022. Monthly rent was \$1,500.00 payable on the first day of each month. A security deposit of \$750.00 was collected at the start of the tenancy and is still held by the Landlord. The Landlord stated the Tenant moved out of the rental unit on December 31, 2021.

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.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

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 Landlord served the NoDRP package to the Tenant by email on February 10, 2022. Based on the Landlord's evidence, I find the Landlord and Tenant do not have agreement to serve legal documents to the other party by email. Due to service not being effected, I dismiss the Landlord's application 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 serve this Tenant. 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

I dismiss the Landlord's application for noneffective service 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: October 03, 2022

Residential Tenancy Branch