



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEST PROPERTY MGMT & REAL ESTATE SERVICES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRT, MNDCT, MNSD**

Introduction

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

1. An Order for compensation for emergency repairs made by the Tenants during the tenancy pursuant to Sections 33 and 62 of the Act;
2. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
3. An Order for the return of the security deposit that the Landlord is holding without cause pursuant to Section 38 of Act.

The hearing was conducted via teleconference. The Tenants and their Support person 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 Tenants confirmed that they personally served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on approximately August 23, 2022 (the "NoDRP package"). The Tenants did not provide a proof of service

for the NoDRP package. 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 Tenants could not provide proof of service of the NoDRP package, 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 Tenants' application against the Landlord. I dismiss all of their claims with leave to re-apply.

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: 604-660-1020 (Lower Mainland)

250-387-1602 (Victoria)

1-800-665-8779

Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Conclusion

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: January 30, 2023

Residential Tenancy Branch