



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding REMAX CREST REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNETC, FFT**

Introduction

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

1. An Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property pursuant to Section 51 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 Respondent and the Applicant 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.

The Applicant testified that she did not serve the Notice of Dispute Resolution Proceeding package (the "NoDRP package") for this hearing on the Respondent. 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 permitted).

As the Applicant did not serve the Respondent at all with 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 Applicant's application against the Respondent. I dismiss her monetary claim with leave to re-apply.

For the benefit of the parties, they may wish to discuss with an Information Officer at the RTB the options available to them when applying for dispute resolution, and how to end a fixed term tenancy. 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: www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies

As the Applicant was not successful in her claim, I do not grant her recovery of the application filing fee.

Conclusion

The Applicant's application is dismissed with leave for improper service.

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: February 21, 2023

Residential Tenancy Branch