



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      **OPR, MNRL-S, FFL**

### Introduction

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

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent – holding security and/or pet damage deposit pursuant to Sections 26, 38, 46 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlords 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 Landlords and I were the only ones who had called into this teleconference. The Landlords were given a full opportunity to be heard, to make submissions, and to call witnesses.

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

The Landlords testified that one Landlord served the Tenant with the 10 Day Notice on February 2, 2023 by posting the notice on the Tenant's door. The Landlord uploaded a Proof of Service form #RTB-34 attesting to this service, but it was witnessed by the same person who served the notice.

Pursuant to Section 88 of the Act, the 10 Day Notice 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 Landlords cannot prove service of the 10 Day Notice, and the Tenant was not in the hearing to confirm receipt of the notice, I find that 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 and it would be administratively unfair to proceed on the Landlords' 10 Day Notice against the Tenant. I cancel the Landlords' 10 Day Notice because of improper service.

The Landlords testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package and evidence on March 8, 2023 by Canada Post registered mail (the "NoDRP package"). The Landlord 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. I find that the Tenant was deemed served with the NoDRP package five days after mailing them on March 13, 2023 in accordance with Sections 89(1)(c) and 90(a) of the Act.

### 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 Landlords' 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.*

I previously found that the Landlords could not prove service of the 10 Day Notice. I cancelled the 10 Day Notice, and the tenancy will continue until ended in accordance with the Act.

I note that even though the Tenant did not pick up the registered mail package containing the NoDRP package, I found this served to the Tenant. Parties cannot avoid legal matters by not picking up registered mail packages. As the 10 Day Notice is canceled, I dismiss the Landlords' application.

For the benefit of the Landlords, they may wish to discuss with an Information Officer at the RTB the options available to them 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 cancel the Landlords' 10 Day Notice, and their dispute resolution application is dismissed.

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: March 30, 2023

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Residential Tenancy Branch