



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

AAT

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for an Order allowing him access to and from the rental unit.

The Advocate for the Tenant stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the director of the Society via registered mail at the service address noted on the Application, on May 20, 2009. A tracking number was provided. The Canada Post website shows the mail was delivered on May 21, 2009. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the director did not appear at the hearing.

The Advocate for the Tenant stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Society via registered mail at the service address noted on the Application, on May 20, 2009. A tracking number was provided. The Canada Post website shows the mail was delivered on May 21, 2009. These documents are deemed to have been served in accordance with section 89 of the *Act*, however an agent for the Society did not appear at the hearing.

The Landlord submitted a letter, dated June 05, 2009, in which the chairman of the Society declared that he would not be attending the hearing. He submitted written documents in response to the Tenant's Application for Dispute Resolution, which the Tenant acknowledged receiving.

### Issue(s) to be Decided

This hearing dealt with an application by the Tenant for an order requiring the Landlord to allow the Tenant access to, and egress from, his rental unit. Specifically, he is seeking authority to drive his mobility scooter to the front door of his rental unit and to park it on his patio area.

## Background and Evidence

The Advocate for the Tenant stated that this tenancy began on March 01, 2002, at which time the Tenant was driving a motor vehicle. He stated that the Tenant did not own a mobility scooter at the beginning of this tenancy.

The Advocate for the Tenant stated that the Tenant currently has a vacant parking space directly in front of his rental unit. The Landlord submitted photographs of the exterior of the rental unit which shows the parking space that has been assigned to the Tenant.

The Advocate for the Tenant stated that the Tenant is physically able to park his mobility scooter in his parking space and walk to his front door. He stated that the Tenant does not want to park his mobility scooter in his parking space because the mobility scooter is not designed to be stored in the elements.

In the written response to the Tenant's Application for Dispute Resolution, the Society administrator argued that the Tenant's mobility scooter does not require shelter, as it is equipped with a roof, doors, and windows. The Landlord submitted an advertisement for a mobility scooter that is similar to the mobility scooter that is the subject of this dispute. The advertisement indicates that the mobility scooter is suitable for "all weather riding"; it has a windshield; windshield wipers; locking doors; locking windows; and a roof.

The Advocate for the Tenant stated that the Tenant is seeking authorization to drive the mobility scooter on the sidewalk and to park it on the patio in front of his rental unit. He is not seeking authorization to use the mobility scooter inside his rental unit. The Advocate for the Tenant stated that the Tenant is able to access his rental unit in the winter, although he has to take a different route on the sidewalk when there is snow piled on some of the sidewalks. He stated that the Tenant is not asking the Landlord to make any special arrangements regarding snow removal during the winter months.

In written documentation submitted by the Landlord, the chairman of the Society stated that the Tenant sometimes rides his mobility scooter through this neighbour's designated patio area for the purposes of accessing his own patio area. The Advocate for the Tenant stated that the Tenant has previously driven his mobility scooter through his neighbour's patio area but that he is willing to commit to keeping his mobility scooter out of patio areas outside of other occupant's rental units.

In written documentation submitted by the Landlord, the chairman of the Society stated that the Tenant sometimes rides his mobility scooter on the grass when accessing his patio area. The Advocate for the Tenant stated that the Tenant has occasionally driven

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on the grass because it is difficult to maneuver one corner of the sidewalk but he states that the Tenant is willing to commit to keeping his mobility scooter on the sidewalk.

In a letter dated April 27, 2009, the chairman of the Society notified the Tenant that he was no longer able to park his mobility scooter on the patio of his rental unit and that he was no longer able to drive his mobility scooter on the sidewalks or on the patio areas. The letter acknowledged that the Tenant had previously been permitted to ride his mobility scooter on the sidewalk and to park it on his patio, but that this privilege had been revoked because the Tenant had damaged the lawn and encroached on the rights and space of other residents.

## Analysis

Section 30(1) of the Act stipulates that a landlord must not unreasonably restrict access to residential property by a tenant or a person permitted on the property by a tenant. I find that the Tenant has submitted insufficient evidence to establish that the Landlord has unreasonably restricted the Tenant's access to the rental unit. In reaching this conclusion, I note that the Tenant has the ability to park his mobility scooter in his designated parking space and to walk to his rental unit, which is in very close proximity to the rental unit. I find that prohibiting the Tenant from driving his mobility scooter on the sidewalk or from storing it on his patio does not restrict access to his rental unit.

Although I recognize that the Tenant does not wish to store his mobility scooter in his designated parking space, I find this is a personal choice that does not directly impact his ability to access his rental unit. In reaching this conclusion, I was influenced by the information provided by the Landlord that establishes this mobility scooter is designed for use in inclement weather and by the absence of evidence that corroborates the Tenant's argument that the mobility scooter is not designed to be stored outdoors.

## Conclusion

As the Tenant has not established that the Landlord is unreasonably restricting access to the Tenant's rental unit, I hereby dismiss his application for an order requiring the Landlord to allow the Tenant access to, and egress from, his rental unit.

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: June 26, 2009.

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