



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OLC, RP

### Introduction

This matter dealt with an application by the tenant to order the landlord to comply with the Act, regulation or tenancy agreement and an Order for the landlord to make repairs to the unit, site or property.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were posted in the landlords mail box to the landlord on June 24, 2009.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached

### Issues(s) to be Decided

- To determine if an order should be in place to ensure the landlord complies with the Act, regulation or tenancy agreement.
- To determine what repairs are required to the site or property.

### Background and Evidence

This tenancy started in February 2006. The tenant lives in a multi family dwelling in which all 22 units have at least one member of the family with a disability. The complex is operated by a Board of Directors who agreed some years ago to build a paved trail at the back of the complex with a gated entrance to make it easier for tenants in wheel

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chairs to access the downtown and recreational area. Since that time the complex has suffered with members of the public walking through the gardens. The Board has experimented by locking the gate to see if this will deter the public access however some tenants have experienced difficulty opening the lock and so the lock has been removed.

The tenant requests the landlords to relock the gate due to acts of vandalism on the complex. The tenant states that there is a history of illegal trespass, theft, disturbing the peace, illegal drug and alcohol use and thefts from cars and gardens. Half of the units petitioned the board to have the lock reinstalled. The petition was brought to the board's attention and was given great consideration however the petition was turned down. The tenant would like to enjoy his garden and home without this constant problem and to feel safe on his property.

The landlords testify that the complex is open at the front and is not a secure complex. When they have locked the gates in the past it has not deterred trespassers from climbing the gate or getting through the fence. They do not feel that the vandalism has increased or decreased if the gate is locked or not. The landlord's state that they understand it is frustrating for the tenant but they do not have the funds for costly security equipment. They have a board member who works with the Citizens on Patrol. This group have increased their presence around the unit and are able to contact the police if they see any suspicious behaviour. Consequently the police presence has also increased.

The tenant argues that if a lock is put on the gate it will stop some of the traffic flow and crimes of opportunity. He feels the landlords are not doing enough to protect his right to reasonable privacy, freedom from unreasonable disturbance and his use of the common areas, i.e. the gardens, free from significant disturbance.

The landlords argue that they have to consider the rights of all the tenants. The complex has tenants with diverse disabilities and the board has to act in each person's best interest by ensuring they can access the gate and consequently the downtown area by the easiest and safest route.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Due to the diverse disabilities among the tenants living on the complex I feel that the landlords have taken steps to enhance the access for the tenants. In doing so it has increased the issues with trespassers and the landlords have experimented by locking the gate and leaving it unlocked. They feel this has not solved the trespass and vandalism issues. The board has increased security patrols and are in contact with the police

I find that the landlords have complied with the Act pursuant to s. 32 and the continuing issues with security on the complex are being addressed. I also find the tenant has failed to prove that the landlords have not acted diligently in preserving the security of the complex as they have tried different options of locking or unlocking the gate which has had little effect on the trespass or vandalism issues.

I find that the tenants' right to quiet enjoyment, reasonable privacy, freedom from unreasonable disturbance, and his use of the common areas has been disrupted due to the trespassers accessing the complex through the gate. However, I find that the landlords have attempted different remedies to prevent this including working with the Citizens on Patrol and the Police and advising the tenants to keep the doors to the complex closed and to remove possessions from cars. The landlords have to take into

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consideration the needs of all the tenants and not impede their access to the gate. Therefore, no Order will be issued at this time for the landlord to make repairs to the site by reinstalling a lock to the gate. However, I strongly recommend that the board continues to pursue their options as to how the gate can be made secure while maintaining the access route for tenants with disabilities. I recommend the board contacts a specialist in security solutions to find an alternative option that would be suitable for all the tenants living on the complex.

## Conclusion

I find that the tenant has not established that the landlords are at fault or in breach of the *Act*, regulations or tenancy agreement. Therefore, the tenants' application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 06, 2009.

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Dispute Resolution Officer