



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

MNDC, OLC, PSF, LRE, RR, FF

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for an Order requiring the Landlord to provide services; for an Order restricting the Landlord's right to access the rental unit; for authorization to reduce the monthly rent; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

The Tenant stated that copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the Landlord's wife, who has previously acted as an agent for the Landlord, on December 07, 2009 or December 08, 2009, when the Landlord's wife came to the rental unit to meet with a building inspector. These documents are deemed to have been served in accordance with section 89 of the *Act*, however the Landlord did not appear at the hearing.

At the outset of the hearing the Tenant advised that the Landlord and the Tenant mutually agreed to end this tenancy and that she has vacated the rental unit. I therefore find it unnecessary to consider the Tenant's application for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement; for an Order requiring the Landlord to provide services; for an Order restricting the Landlord's right to access the rental unit; and for authorization to reduce the monthly rent.

At the hearing the Tenant attempted to claim compensation for being without a mailbox key, however she was advised that this issue would not be considered as she did not outline this aspect of her dispute on the Application for Dispute Resolution, as is required by section 59(2)(b) of the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to financial compensation for being denied access to the underground parking; for being denied access to her storage locker; for loss of quiet enjoyment; and to recover the filing fee for filing this Application for Dispute Resolution.

Background and Evidence

The Tenant submitted a written tenancy agreement that establishes that she entered into a fixed term tenancy agreement for this rental unit that began on May 01, 2009 and was scheduled to end on April 30, 2010, although she stated that she moved into the rental on April 27, 2009. She stated that the Landlord and the Tenant mutually agreed to end the tenancy on December 31, 2009 and that she vacated the rental unit on December 16, 2009. The Tenant stated that she was paying monthly rent of \$900.00 per month and that underground parking and a storage locker was included in her tenancy.

The Tenant submitted a copy of an email that she received from the Landlord's brother, dated July 09, 2009, in which he advised her that she was permitted to park in the space numbered 114. The Tenant submitted a copy of an email that she sent to the Landlord's brother, dated July 13, 2009, in which she advised him that she is unable to use the remote for the underground parking. There is no mention in this email that she requires a key to the underground parking area.

In written documents submitted prior to the hearing the Tenant declared that the Landlord's wife provided her with a remote to the underground parking, on November 18, 2009, which would take approximately two weeks to "activate". She declared that on November 18, 2009 the Landlord's wife also provided her with a key to the underground parking that did not work. .

At the hearing the Tenant stated that she asked for the remote control and the key that provides access to the parking and storage area on at least three occasions and that she sent the Landlord an email on July 09, 2009, in which she reminded the Landlord that she had not yet been given a parking space. At the hearing she stated that she finally received a functional remote control for the parking area on December 05, 2009 but she never received a key to the parking area. She stated that she could not use the parking area after receiving the remote as she needed a key to access the area once her car in the underground parking. She stated that she never used the storage facilities as she needed the key that accessed the underground parking area to access the storage area and she was never given a key to the storage area.

The Tenant is seeking compensation of \$75.00 per month for being without parking and storage for the duration of the tenancy. She has merely estimated the value of these

services and she has based her estimate on her previous experience of paying \$33.00 per month for storage facilities.

The Tenant is also seeking compensation for the loss of the quiet enjoyment of her rental unit. The Tenant contends that the Landlord breached her right to the quiet enjoyment of her rental unit by attempting to show her rental unit to prospective purchasers without proper notice and by illegally accessing her rental unit.

In support of her claim for compensation for loss of quiet enjoyment the Tenant stated that sometime after 1800 hours on October 09, 2009 the Landlord posted a notice on her door in which he advised that he wished to show the rental unit to a prospective purchaser on October 10, 2009 between 1300 and 1500 hours. She stated that the prospective purchasers arrived to view the rental unit at 1200 hours on October 10, 2009, which is approximately 18 hours after the Notice was posted. She stated that she was home when the prospective purchasers wished to view the rental unit so she permitted them access to the unit, although she advised the Landlord that the notice was inadequate.

In support of her claim for compensation for loss of quiet enjoyment the Tenant stated that on November 06, 2009 the Landlord sent an email to her place of employment in which he advised that the rental unit would be shown to prospective purchasers on November 07, 2009 at 1530 and 1730 hours. She stated that she did not read this email until November 09, 2009. She stated that she was home when the prospective purchasers arrived to view the rental unit at approximately 1530 hours on November 07, 2009 and she felt compelled to permit them access to the unit. She stated that she was home when more prospective purchasers arrived to view the rental unit later that afternoon and she denied them access to the unit.

In support of her claim for compensation for loss of quiet enjoyment the Tenant stated that on December 05, 2009 a house inspector arrived at her rental unit and she denied him entry on the basis she had not received proper notice of the inspection.

In support of her claim for compensation for loss of quiet enjoyment the Tenant stated that she was advised by her neighbour that the Landlord and two females entered the rental unit on October 25, 2009, where they remained for approximately fifteen minutes. She stated that the neighbour's daughter advised her that she observed the Landlord enter the rental unit on a second occasion, but the daughter did not provide any details of that incident. The Landlord did not submit any documentary evidence from either witness in regards to these incidents.

### Analysis

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement for which she was required to pay monthly rent of \$900.00. Based on the evidence provided by the Tenant

and in the absence of evidence to the contrary, I find that the tenancy included an underground parking space and access to a storage facility.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that the Tenant was not able to enjoy the benefits of the underground parking space and access to a storage facility because she was never provided a key to these areas and she was not provided with remote access to the parking area until December 05, 2009, which is shortly before this tenancy ended.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that a parking space and storage facilities were a material term of this tenancy and that the value of this tenancy was reduced when the Landlord failed to provide access to these services. As the Tenant has not provided any documentary evidence to support her claim that the absence of these services reduced the value of this tenancy by \$75.00, I subjectively determine that the absence of these services reduced the value of this tenancy by \$50.00. I find this to be reasonable compensation for parking in an area where street parking is available and for storage areas that are commonly associated with rental units. On this basis, I find that the Tenant is entitled to a rent rebate of \$50.00 per month for the eight month duration of this tenancy, which equates to \$400.00.

As the Tenant gave the prospective purchasers permission to enter the rental unit on October 10, 2009, I find that this entry was in compliance with section 29(1)(a) of the *Act*. As the Tenant gave the prospective purchasers permission to enter the rental unit on November 07, 2009, I find that this entry was in compliance with section 29(1)(a) of the *Act*. I note that the Tenant denied access to some prospective purchasers later in the day on November 07, 2009 and to the house inspector on December 05, 2009, which causes me to conclude that the Tenant had the ability to refuse access when proper notice was not given and that she understood that she had the right to refuse access when proper notice was not given. I do not find that any of these incidents establish that the Tenant's right to quiet enjoyment has been breached and I deny the Tenant's claim for compensation on the basis of these incidents.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that the Tenant's neighbors advised her that the Landlord was observed entering the rental unit on two occasions. In the absence of evidence from the people who actually witnessed the entry, however, I decline to award the Tenant compensation for these entries. In reaching this conclusion, I was influenced by the fact that the people who witnessed the entry did not submit any evidence the outlines the details of her alleged entry, which precludes me from assessing the veracity of their evidence and from determining details surrounding the need for an entry. In the event that these witnesses provided evidence to show that the Landlord was inside the rental unit without lawful authority, I am not satisfied that these actions would constitute a breach of the Tenant's right to quiet enjoyment that was significantly serious as to warrant financial compensation.

I find that the Tenant's application has some merit, and I find that the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$450.00, which is comprised on \$400.00 in compensation for services that were promised as part of the tenancy but were not provided and \$50.00 in compensation for the filing fee paid by the Tenant for this Application for Dispute Resolution.

Based on these determinations I grant the Tenant a monetary Order for the amount of \$450.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: January 14, 2010.

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Dispute Resolution Officer