



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC ERP RP PSF LAT

### Preliminary Issues

At the outset of the hearing the Landlord advised the rental property which is subject of this dispute is owned by his Limited company. He stated that he holds all of the voting "A" shares and his spouse, whom he is currently separated from, owns all of the non-voting "B" shares and she has no signing authority.

As the property owner is listed as the Limited company I have amended the style of cause for this application to include the Limited company name; pursuant to section 64 (3)(c) of the Act that stipulates the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain Orders to have the Landlord comply with the Act, regulation, or tenancy agreement, make emergency repairs for health or safety reasons, make repairs to the unit, site or property, provide services or facilities required by law, and to authorize the Tenant to change the locks to the rental unit.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the Act, sent via registered mail on February 29, 2012. Based on the submissions of the Tenant I find the Landlord was sufficiently served notice of this proceeding.

The parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Do the parties to this dispute have a tenancy agreement which falls within the jurisdiction of the *Residential Tenancy Act*?
2. If so, what are the terms of the tenancy agreement?

3. If so, has the Landlord breached the *Residential Tenancy Act*, regulation, or tenancy agreement?

#### Background and Evidence

The Landlord advised that he did not receive the notice of hearing documents until Monday March 12, 2012. He advised that due to his financial hardship he finds it too stressful to pick up his mail daily as he has so many bill collectors coming after him so he has chosen to pick up his mail only one day a week, on Mondays. He stated that as a result he did not have enough time to submit evidence. I explained to the Landlord that his personal choice to pick up his mail only once a week does not negate that service was conducted in accordance with section 89 of the Act and therefore I would continue with the hearing today, pursuant to section 6.6 of the *Residential Tenancy Branch Rules of Procedure*.

The Tenant affirmed that she has occupied this rental unit since approximately July 2009. She paid rent of \$850.00 in July 2009 for August 2009 rent and paid \$800.00 in September for September 2009 rent plus \$425.00 as the security deposit in September 2009.

The Tenant advised that in 2006 she had loaned the Landlords (her daughter and son in-law) \$80,000.00 to invest in a real estate property. The property was sold in October 2009 at which time she entered into a verbal agreement for the Landlords to hold onto her \$80,000.00 investment as pre-payment of rent and her monthly rent would be deducted from this investment at \$850.00 each month until the investment was depleted. She referenced the written document that was signed by the female Landlord, her daughter, and was provided into evidence for their May 2011 hearing. She continued to pay her own utilities and continued to occupy the rental unit with her rent being deducted from this investment.

She referenced her evidence, which included copies of text messages from the Landlord where he is harassing her to move out of the unit. He has since turned off the electricity and shut off the water and she has not occupied the unit since March 5, 2012. She has requested orders to have him turn the water and power back on so she can reoccupy the unit. She has agreed to pack and vacate the property by April 30, 2012. She also requests permission to be able to change the locks. She is concerned the Landlord may enter her suite during her absence and argued that he has entered in the past after providing a text message and not proper written notice.

The Landlord affirmed that the Tenant has occupied the rental unit since July or August 2009. He stated he did not have his records with him so he could not confirm the exact

date. He recalls that she paid rent at the beginning of the tenancy and that rent was to be \$850.00 per month however he cannot say for certain if a security deposit was paid or not as his wife looked after that part of the business. He stated that at that time his wife was in charge of all the finances and he did not have access to the bank account information. He does know that the unit was renting for over \$1,000.00 per month and they had agreed to give his mother in-law a break so they decided to rent it to her at \$850.00 per month. He cannot say for certain when the rent cheques stopped as his wife was in charge of all that.

The Landlord confirmed there was a large sum of money that he says was “gifted” from the Tenant to his wife which was part of the Tenant’s father’s estate. He stated that she gifted her other daughter a large amount of money as well. He stated he could not provide testimony about what financial arrangements were made when the property was sold in October 2009 because he said he did not have access to the bank accounts at that time and it was his wife who looked after that end of the business.

The Landlord confirmed he turned off the electricity and water to the Tenant’s suite and argued that the water was leaking and main breaker was tripping causing the power to go out. He stated he cannot afford to hire contractors to come in and repair the building so he just shut everything off on March 5, 2011. He denies entering the rental unit without proper notice and stated that he did provide written notice prior to entry.

The Tenant stated that her power had never gone out and she is not aware of any problems with the hot water tank.

### Analysis

I have carefully considered the aforementioned and the documentary evidence which included, amongst other things, a copy of the Tenant’s written statement and copies of text messages sent to the Tenant from the Landlord.

Section 1 of the Act provides that a “**tenancy agreement**” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 1 of the Act defines a landlord as follows:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

- (i) permits occupation of the rental unit under a tenancy agreement, or
- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Applying the above definition, I find that the respondents as named in this dispute are proper parties to this proceeding. There was ample evidence that both the named Landlords took action to permit occupation of the rental unit and exercised powers while performing duties under the Act which related to the tenancy in the rental property and that the Limited company is named as owner on the property title. My finding does not require piercing the corporate veil but rather the application of the definition of landlord contained in the Act.

Both parties provided affirmed testimony which confirms the Tenant occupied this unit sometime in July or August 2009 and that she was to pay the monthly rent of \$850.00 per month. In the absence of evidence to the contrary I accept the Tenant's testimony that she also paid \$425.00 as a security deposit on September 1, 2009. The evidence further supports the Tenant has occupied this unit until March 5, 2012 which is when the Landlord turned off the power and water to her unit.

Based on the aforementioned, I find, on a balance of probabilities that the parties entered into a verbal month to month tenancy agreement which began in July or August 2009, for the monthly rent of \$850.00 and in September 2009 the Tenant paid \$425.00 as the security deposit. Accordingly, I find the matters listed in the Tenant's application for dispute resolution, fall within the jurisdiction of the *Residential Tenancy Act*.

Section 32 (1) of the Act stipulates that a landlord must provide and maintain residential property in a state of decoration and report that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

I favor the evidence of the Tenant, who stated her power had not gone out nor did she have problems with her water prior to the Landlord shutting these off and that this is the Landlord's attempt to get her out, as supported by her evidence of text messages from the Landlord, over the evidence of the Landlord who stated that the main electrical breaker has been tripping. I favored the evidence of the Tenant over the Landlord, in part, because the Tenant's evidence was forthright and credible and was supported by the text messages she provided in evidence which included demands such as "You must move March 1. As of March 1 you will not have access to your place"

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I find the Landlord's explanation of why he turned off the power and water to be improbable. Given that this building consists of commercial units in the lower level and two residential units in the upper level I find it highly unlikely that the main power had to be shut off. Furthermore I find the Landlord's text messages to be of a harassing nature to attempt to have the Tenant vacate the property which is a significant breach of the Act. I find that the Landlord's explanation that he simply cannot arrange to have the power and water turned back on for this rental unit to be improbable, not to mention does not meet the requirement under section 32 of the Act which stipulates a landlord **must** maintain the building and make it suitable for occupation, as listed above.

For all the aforementioned reasons, I find the Landlord to be in breach of section 32 of the Act and I issued the following verbal Orders during the hearing:

The Landlord is HEREBY ORDERED to have the power and water turned back on no later than today, March 15, 2012 at 5:00 p.m. at which time the Tenant will be given full

unobstructed access to her unit, pursuant to section 62(3) of the *Residential Tenancy Act*.

The Landlord is HEREBY ORDERED to not interfere with the Tenant's occupation of the rental unit for the remainder of her tenancy. The Tenant has hereby agreed to vacate the rental unit by April 30, 2012 at which time the Landlord will regain possession of the unit, pursuant to section 62(3) of the *Residential Tenancy Act*.

There is insufficient evidence before me to allow the Tenant to change the locks; therefore her application for this item is hereby dismissed.

I caution the Landlord that under section 95(2) of the Act, any person who coerces, threatens, intimidates or harasses a tenant from making an application under the Act, or for seeking or obtaining a remedy under the Act, may be found to have committed an offence and is subject to a fine or administrative penalty.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

### Conclusion

I HEREBY ORDER the Landlord to comply with the *Residential Tenancy Act* and with my verbal orders, as listed above, pursuant to section 62 of the *Residential Tenancy Act*.

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: March 15, 2012.

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Residential Tenancy Branch