



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC, OLC, LRE

### Introduction

This hearing dealt with a tenant's application for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; Orders for the landlord to comply with the Act, regulations or tenancy agreement; and, Orders to suspend or set conditions on the landlord's right to enter the rental unit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

#### **Dispute resolution proceedings**

It should be noted that prior to hearing the merits of the dispute the tenant asked whether I or the Residential Tenancy Branch are corrupt or stand up for tenants who make complaints against their landlord. I proceeded to inform the parties as to the role of the Branch in resolving residential tenancy related disputes identified on an Application for Dispute Resolution. The tenant appeared satisfied with my explanation and the hearing continued.

#### **Service of evidence and written submissions**

With respect to service of evidence, both parties confirmed receipt of the other parties' evidence or submissions with the exception of one document submitted to the Branch by the tenant. The document, dated February 9, 2015, was excluded from further consideration as it had not been served upon the landlord; however, the tenant was permitted to orally testify as to the purpose of that document.

#### **Previous dispute resolution proceedings**

Decisions issued by an Arbitrator under the Act are final and binding. A party may not commence a subsequent Application on the same grounds previously heard and decided upon in an attempt to achieve a different outcome.

The tenant referred to a previous dispute resolution proceeding during this hearing. I note that the tenant made some of the same allegations that were made during the previous hearing of June 18, 2013: that somebody has been entering her unit. In the decision issued on June 20, 2013 the tenant's claims were dismissed. However, since the tenant was unable to provide specific dates as to the alleged entry by unknown persons for this proceeding I considered her submissions on the assumption they allegedly took place subsequent to June 18, 2013.

For future reference, the tenant is prohibited from filing another Application for Dispute Resolution for the same reasons already heard and decided upon.

### **Teleconference call connection**

It should be noted that after approximately 1.5 hours of hearing time the landlord's telephone line disconnected as I was about to conclude the teleconference call. I did not hear any further testimony after the landlord disconnected except to confirm the tenant's mailing address.

### **Issue(s) to be Decided**

1. Has the tenant established an entitlement to compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?
2. Is it necessary to issue orders for compliance to the landlord?
3. Is it necessary to suspend or set conditions upon the landlord's right to enter the rental unit?

### **Background and Evidence**

The tenancy commenced in January 2005 and the tenant is currently required to pay rent of \$780.00 on the 1<sup>st</sup> day of every month.

Below, I have summarized the issues raised by the tenant and the landlord's responses.

### **Orders for compliance**

1. New locks

The tenant requested new locks be installed on her rental unit door. The tenant asserted that somebody has been entering her unit while she is out although she does not know the identity

of the person or persons. The tenant submitted that she knows someone has been entering her unit because:

- Her clothes no longer fit her so somebody must be altering her clothing;
- A piece of her shoe came apart;
- Upon returning home she found her shoes were not in the same place she left them and a device was missing from her bag.
- Upon returning home she found only one lock was engaged rather than both locks.

The tenant could not provide specific dates as to the above occurrences and testified that it happens “all the time” and “from time to time”.

The tenant acknowledged that she has not seen or caught the landlord in the rental unit upon returning home and explained that she has been unable to spy because there is nowhere to hide and because the landlords text each other as to the tenant’s location.

The tenant acknowledged that the landlord installed a new lock with new keys on her door some time ago but during the installation process the landlord walked away with the lock for 15 minutes.

The landlord testified that locks were changed on the tenant’s unit in 2009 and in 2013 new locks and new keys were purchased for the tenant’s unit to address her concerns. The landlord gave the new keys to the tenant and kept a copy and confirmed that a copy of the new keys was not given to anybody else. The landlord denied any unlawful entry into the tenant’s unit.

As a possible resolution to this dispute, the landlord was agreeable to installing a new lock on the tenant’s door if the tenant were to purchase a lock of her choosing, so long as it is appropriate for the door of the rental unit.

## 2. Repairs

The tenant submitted that the landlord does not take her requests for repairs seriously. The tenant stated that the parties’ had been to dispute resolution approximately one year ago and after that hearing the landlord repaired everything but since then new repair issues arose. The tenant acknowledged that she no longer puts requests for repairs in writing; however, the landlord did come to the unit inspect the unit for items that need repair. When asked which items require repair specifically, the tenant stated there were no outstanding repairs because she fixed them.

The landlord testified that she learned of the tenant’s requests for repairs upon receipt of this Application for Dispute Resolution. The landlord gave the tenant a Notice of Entry and inspected the unit but found nothing in need of repair. The landlord only noted ordinary wear and tear during the inspection.

### **Suspend or set conditions on landlord's right to enter**

The tenant pointed to a term in the tenancy agreement that she submits is not permissible. The term reads:

"Manager reserves right to inspect premises monthly or reasonable verbal notice."

The landlord testified that she serves the tenant written 24 hour notices before entering the rental unit.

The tenant testified that the landlord has entered with verbal notice and written notice; however, the tenant did not provide a specific date as to when entry was made by way of verbal notice only. The tenant claimed that she had a police report to prove this but the police report to which the tenant referred was not included in the evidence submitted to the Branch for this proceeding.

### **Monetary compensation**

The tenant requested compensation of \$1,000.00 from the landlord. The tenant explained that she seeks this compensation for the following:

- Clothing that has changed in size
- A shoe that was repaired with glue by the tenant
- Loss of a device while the tenant was not home
- Larger hydro bills that are the result of:
  - the landlord granting the tenant access to the electrical room to inspect her hydro meter only once but refusing the tenant's other requests for access to the electrical room;
  - somebody plugging appliances in while the tenant was not home; and,
  - the landlord and BC Hydro co-conspiring to commit fraud.

I noted and the tenant confirmed that she had not included hydro bills or photographic or other documentary evidence in support of her monetary claim.

The landlord denied entering the rental unit unlawfully, damaging or stealing the tenant's possessions.

The landlord confirmed that new "smart meters" were installed by BC Hydro in the past couple of years. The landlord stated that she permitted the tenant access to the electrical room to inspect her hydro meter on more than one occasion but the tenant began making this request every week and the landlord does not always have the time to accommodate her requests. The landlord also stated that on occasion she has offered the tenant the opportunity to accompany her to the electrical room and the tenant has declined.

### Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

As the applicant, the tenant bears the burden to prove her claims and an entitlement to the remedies that she seeks. The burden of proof is based on the balance of probabilities. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

### **Request for orders for compliance**

Where a tenant seeks an order for compliance by the landlord, the tenant must demonstrate that the landlord has or is likely to violate the Act, regulations or tenancy agreement.

#### **1. New locks**

Under the Act, a tenant may request the landlord change the locks at the beginning of the tenancy and the landlord must fulfill with that request. The Act does not impose an obligation upon the landlord to change the locks to a rental unit during the tenancy, except if so ordered by the Director or Arbitrator.

In this case, the landlord has changed the locks on the rental unit twice during the tenancy in an effort to appease the tenant's concerns about someone entering her unit. I find the tenant's vague and disputed testimony insufficient for me to conclude the landlord has been unlawfully entering the tenant's rental unit or that the landlord is responsible for someone else entering the tenant's rental unit. Therefore, I find I am unsatisfied that the landlord has violated the Act with regard to the locks currently installed on the rental unit.

In keeping with the landlord's agreement expressed during the hearing, I make the following conditional order:

If the tenant purchases a new lock at her expense, and the lock is appropriate for the door of the rental unit, upon receiving a copy of a key for the new lock, the landlord shall install the new lock in the presence of the tenant.

## 2. Repairs

Since the tenant acknowledged there were no outstanding repairs at the present time I make no repair orders to the landlord.

### **Orders to suspend or set conditions on the landlord's right to enter**

Section 6 of the Act provides that any term in a tenancy agreement that is inconsistent with or violates the Act is not enforceable. In other words, parties may not agree to contract outside of the Act.

Section 29 of the Act provides for a landlord's restricted right to enter a rental unit. Section 29 permits a landlord to enter a rental unit by obtaining a tenant's verbal consent or upon giving the tenant written 24 hour notice. Giving a tenant verbal notice of entry is not permissible.

Therefore, I find the last term in the tenancy agreement as described in the Background section of this decision is non-compliant with the Act and the landlord must comply with section 29 of the Act.

Despite the non-compliant term in the tenancy agreement, I find the tenant's unsubstantiated and disputed testimony insufficient to meet her burden to prove the landlord has violated section 29 of the Act. Therefore, I make no orders to suspend or set conditions on the landlord's restricted right to entry as provided under section 29 of the Act.

As the landlord is required to comply with section 29 of the Act and during the hearing it was apparent the tenant is unfamiliar with section 29, I have reproduced it below for the parties' further reference.

### **Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

### **Monetary compensation**

Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Substantiate the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find the tenant's disputed testimony and lack of documentary evidence such as hydro bills or other evidence to prove loss or damage to her personal property insufficient to conclude the landlord has violated the Act, regulations or tenancy agreement which caused the tenant to suffer damages and loss equivalent to \$1,000.00. Therefore, I dismiss the tenant's claim for compensation from the landlord.

### **Conclusion**

The tenant's Application has been dismissed; however, in recognition of an agreement made by the landlord during the hearing I have made one conditional order to the landlord with respect to a new lock.

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: February 19, 2015

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Residential Tenancy Branch



