



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, LRE, LAT, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the Act, regulations or tenancy agreement; for an Order to suspend or set conditions on the landlord's right to enter the rental unit; for an Order to authorize the tenant to change the locks to the rental unit; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. The tenant testified that he also sent in one page of late evidence. As this is considered late and it is not before me I have not considered that page of evidence pursuant to the Rules of procedure 3.14 and 3.17. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Some time was spent at the outset of the hearing concerning the landlord's evidence package. The landlord testified that he has filed an application and seeks to have this dealt with alongside the tenant's application today. I informed the landlord that he has not filed an application with the Residential Tenancy Branch and that he has only filled in an application form and used the tenant's file number. This does not constitute an

application. I informed the landlord that if he has a dispute against the tenant he is at liberty to file an application separately to deal with that but it will not be dealt with at this hearing today.

#### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?
- Is the tenant entitled to an Order to suspend or set conditions on the landlord's right to enter the rental unit?
- Is the tenant entitled to an Order to change the locks to the rental unit?

#### Background and Evidence

The parties agreed that this month to month tenancy started on July 01, 2015. This is a verbal agreement between the parties for the tenant to rent this carriage house for a monthly rent of \$600.00 per month.

The tenant seeks to recover \$2,175.23 from the landlord for damage to the tenant's vehicle. The tenant testified that on the morning of March 20, 2016, the tenant was leaving for work and as he was getting into his car the landlord approached him and asked him to open the blinds in the unit. The tenant refused as he felt it was a security issue so he got into his car and started it. The landlord then proceeded to open the car door and rammed it open as the tenant started to reverse the car. The tenant felt that this was becoming a hostile situation so he continued to reverse his car slowly. The landlord's actions caused the door to open further than it should and this damaged the door and fender. The tenant agreed he also backed into a tree branch. The landlord was yelling at the tenant that he was not going to pay for that.

The tenant testified that he attempted to shut the car door but it would not latch so he had to stop the car and then managed to pull the door closed enough to latch it. The tenant called the police and reported this incident; however, the police deemed it to be a landlord /tenant issue and they did not attend although they did provide a police file number to the tenant.

The tenant referred to his photographic evidence showing the damage to the door skin where it is creased and dented from the hinges being forced back, the area below the mirror is damaged and the fender is damaged. The door regulators were also damaged. The tenant drove his car to a distribution centre to pick up some items and he had to leave his car from the passenger side. A woman in this centre saw this and asked the tenant why he was not using his driver side door. The tenant invited this woman to come out and look at the damage. As the tenant tried to open the door the window shattered. The tenant referred to the letter provided in evidence from the woman at the distribution centre who witnessed this and documented the incident as to why the glass shattered.

The tenant testified that the next day March 21, 2016 took his car to the Toyota service shop and was informed that this type of damage to the door would cause the window to break. The tenant referred to the estimate from the body shop which details the primary impact damage to the left hand side. They have detailed the work required to repair the damage. The estimate for this work is \$2,175.23. The tenant testified that he only carries basic insurance on his car and this does not cover vandalism. The tenant has not yet been able to get this work done due to the cost. The broken window has had to be covered with plastic which is a security issue for the car. The tenant therefore seeks to recover \$1,000.00 because of the security issue until the car can be repaired.

The tenant testified that he came home from work on May 05, 2016. The landlord came to the unit and wanted to come in. The tenant refused the landlord entry as no written notice of entry was provided. The landlord stated that he is allowed to come in once a month to inspect the unit. At that time the landlord forced his way into the door, pushing

the tenant back. The landlord then entered and went to the fridge and opened the door. At this point the tenant picked up a knife and told the landlord to get out of his unit. The tenant testified that he only picked up the knife as a way to force the police to come to the unit. The tenant called the police and when they arrived he explained what had happened. The tenant agreed that the police officer told him he should not have picked up the knife. The tenant testified that he spoke to the officer about the damage to his car and the hostile situation he was in and the assault when the landlord forced his way into the unit. Due to this the tenant seeks \$1,000.00 in compensation from the landlord for entry without written notice.

The tenant seeks an Order to force the landlord to comply with the *Act* with regard to entry to the tenant's unit. The tenant testified that the landlord seems to think he can enter the unit for any reason and he also orders the tenant to open his blinds to let the heat in when the tenant prefers to keep them closed for security reasons.

The tenant seeks an Order to suspend the landlord's right to enter the unit as the tenant no longer feels safe due to the last two hostile situations with the landlord. The tenant also seeks an Order to permit him to change the locks to the rental unit.

The landlord disputed the tenant's claims concerning damage to the tenant's car. The landlord testified that he heard the tenant starting his car and as he had previously had a discussion with the tenant about keeping his blinds open in the day to help with the heating costs, he went to speak to the tenant about going back into the unit to pull up his blinds. The landlord testified that there are cedars located by the tenant's car and the tenant could not see or hear the landlord approaching so the landlord gently opened the tenant's car door and asked him to open his blinds as it was a sunny day. There was even a conversation about the hockey game the night before. This whole episode lasted for around 45 seconds. The tenant started to back his car up as he said he had to get going. The car was moving slowly but the landlord twisted his ankle and the car door could have knocked him over. As the tenant was backing up he hit a three inch cedar tree trunk. He realised he could not move further backwards so he then went forwards.

The landlord testified that this was reported to the police by the tenant and the officer read the tenant's statement to the landlord. The landlord testified that he has not actually seen the police report. The landlord testified that as the damage to the car door was done by the tenant hitting the tree and not by the landlord forcing the door open then the landlord should not be responsible for the tenant's car repair.

The landlord disputed the tenant's claim for \$1,000.00 for loss of security to the tenant's car due to a broken window. The landlord testified that this is also not the landlord's responsibility.

The landlord disputed the tenant's claim for \$1,000.00 for forced entry into the unit. The landlord's agent testified that under s. 29(1)(c) of the Act it states that if the landlord provided housekeeping services and relative services then the landlord can enter the rental unit. When the tenant moved into the unit the landlord and tenant had a verbal agreement that allowed the landlord to enter the unit to defrost the freezer regularly as a housekeeping service. Then in April or May, 2016 the tenant said he would do this himself but this was after the alleged incident.

The landlord testified that he did given the tenant a notice of entry for the monthly inspections. At the time the tenant referred to the landlord testified that he was in the garage below the unit when he could hear the fridge running all the time. The landlord had previously set the thermostat inside the fridge to run at +2 for the fridge and -12 for the freezer. The tenant must have ripped off the tape the landlord had put in the fridge and jacked the thermostat up to +3. The landlord testified that he did not push his way into the tenant's unit but he did go to the door to check the fridge and told the tenant that he was going to burn the motor out. The tenant was in the kitchen when the landlord knocked on the door, the landlord agreed that the tenant did not invite him in but the landlord just entered the unit to check the fridge out. The tenant came over with a butcher's knife and scared the landlord. The landlord testified that the police never

spoke to him about the issue with the knife but did say that they should try to work things out together and get interpretation on the *Act*.

The landlord disputed the tenant's claim that the landlord assaulted him. The landlord claims he never created a hostile situation, he did not yell at the tenant, he did not push his way into the tenant's unit and he did not damage his car.

I asked the tenant about the content of the police report that the landlord claims says the tenant reported to the police that he hit a tree with his car door. The tenant responded that the door hit the edge of a tree as he was backing up but the damage to the door had already been done by the landlord. There was no damage to the inside of the door caused by the tree. The tenant testified that he provided all of that information to the police that he was backing up to get out of a hostile situation.

The landlord asked the tenant if he remembers when the landlord first opened the car door was the landlord speaking about a great hockey game last night. The tenant responded that that conversation about hockey started as the landlord walked towards the tenant's car. The landlord asked the tenant if he told the constable that the landlord damaged his car. The tenant responded that he called the police and said the landlord had damaged the door and that the tenant had brushed against a tree. The landlord asked why the tenant thought this was a hostile situation. The tenant responded that the landlord would not leave him alone. The tenant asked the landlord to leave and this situation went on longer than 45 seconds. The landlord kept going on about the science of opening the blinds to let heat into the unit.

The landlord's agent asked the tenant about the body shop and did they say it would require high speed to do the damage to the car and that it could not have been done by backing up into a tree trunk. The tenant responded that he was backing up slowly. If he had hit the inside of the door with the tree trunk it would have caused damage to the inside door. The door is curved and if the damage was caused by the tree trunk it would

curve back and break the window. The damage was done by the landlord forcible pushing the door open beyond its limit.

The tenant testified that at the previous hearing the landlord stated under oath that the damage to the tenant's car did not happen on the property and that it was a matter between the tenant, the police and ICBC. Now the landlord is saying the damage was done by a tree on the property.

The landlord's agent testified that at the previous hearing the matter was not heard as the tenant had not provided documentary evidence and it was dismissed with leave to reapply. The landlord did not provide testimony at that hearing.

The tenant testified that the landlord did give some testimony at the previous hearing.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the tenant's claim that the landlord caused damage to his car; I am satisfied from the evidence before me that an incident took place on March 20, 2016 where the landlord opened the tenant's car door and the door was forcible pushed back. I am not persuaded by the landlord's arguments that this damage was caused by the tenant backing up with his open door into a tree trunk. While the tenant agreed this did occur I am satisfied that it was not the tree trunk that caused the damage as there would have been damage to the inside of the car door showing an impact that would be sufficient in nature to push the car door so far back to damage the outer skin and fender. Consequently, I find in favour of the tenant's claim to recover the costs to repair the damage to his car of **\$2,175.23** and the tenant will receive a Monetary Order pursuant to s. 67 of the *Act*.

With regard to the tenant's claim that due to the damage to the car this left his car unsecured. While I accept that the car was not secure because of the broken window; however, as the tenant has not encountered an issue due to the car not being secure then I find the tenant has not suffered a loss in this matter. The tenant's claim to recover \$1,000.00 is therefore dismissed.

With regard to the tenant's claim that the landlord forcible pushed his way into the rental unit and assaulted the tenant. In this matter it is one person's word against that of the other. It is important to note that 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.

There were no witnesses present to see this alleged assault and while I accept that the landlord should not have entered the tenant's unit, there is insufficient evidence to show an assault took place upon the tenant. Consequently, the tenant's claim to recover \$1,000.00 is dismissed.

With regard to the tenant's application to suspend or set conditions on the landlord's right to enter the rental unit; the landlord has presented some confusing evidence concerning his right of entry. I direct the landlord to s. 29 of the *Act* which states:

**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).*

The landlord did not provide a written tenancy agreement to provide terms for any housekeeping services. I do not consider the defrosting of a freezer to be a housekeeping service and if the freezer requires constant defrosting the landlord should look at repairing or replacing this appliance. The landlord has provided no evidence to support his claim that he has provided 24 hour written notice to the tenant to enter the unit for monthly inspections and clearly the landlord is under the belief that he can enter the unit without the tenant's express permission. Consequently, I find it would be reasonable to first educate the landlord in his rights of entry and I therefore set conditions on the landlord's right to enter the rental unit.

The landlord must provide 24 hours written notice of entry as provided under s. 29(1) of the *Act*. The landlord must not enter without written notice for any other reason other than s. 29(1)(f) to protect life or property if an emergency exists. If the landlord wants to carry out a monthly inspection then he must still comply with s. 29(1)(b) of the *Act*.

If the landlord does not comply with s. 29 of the *Act* then the tenant is at liberty to file an application for dispute resolution for monetary compensation and to suspend the landlord's right to enter the rental unit and to change the locks of the rental unit.

Consequently, the tenant's application to change the locks to the rental unit is dismissed with leave to reapply.

With regard to the tenants application for an Order for the landlord to comply with the *Act*, I Order the landlord to comply with s. 29 of the *Act* regarding entry to the rental unit. Furthermore, the landlord cannot compel a tenant to leave his blinds open during the day if the tenant chooses to keep them closed for security reasons. The landlord may not hinder the use of the rental unit for any lawful purpose. The landlord must desist from attempting to force the tenant to open his blinds.

As the tenant's application has some merit I find the tenant is entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*.

### Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$2,275.23**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

I Order the landlord to comply with s. 29 of the *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: October 05, 2016

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Residential Tenancy Branch

