



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPT, LAT, OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to obtain an order of possession, to authorize a tenant to change the locks to the rental unit and to have the landlord comply with the Act.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by express registered mail sent on April 5, 2017, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act.

### Issues to be Decided

Should the tenant be granted an order of possession?  
Should the tenant be authorized to change the locks?  
Should the landlord be ordered to comply with the Act?

### Background and Evidence

The tenant testified that they have lived with their adult child and family for a long time and has always paid rent.

The tenant testified that their adult child purchased this particular home in February 2017 and they have lived in a separate self-contained unit in the basement. The tenant stated that they pay \$500.00 per month for rent.

The tenant testified that somehow they upset their child by giving driving lessons to their spouse. The tenant stated they were told to vacate the property by text message. The tenant stated that they have now been locked out of the rental unit, which contains all their belongings including medication, and they have been living in a transition house. The tenant seeks an order of possession.

The tenant testified that they have never had a key to the rental unit since they moved in, as the old owners never provided a copy to their child when they purchased the property.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

**"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.

In this case, the tenant pays their adult child to rent the basement portion of the property. When a family member rents to another family member that relationship does not exclude them from the Act.

Section 5(1) of the Act states a landlord and tenant may not avoid or contract out of this Act or the regulations.

I am satisfied based on the undisputed testimony of the tenant that they pay the amount of \$500.00 per month to possess the basement unit. I find a tenancy exists between the parties and the Act applies. This is supported by a bank statement showing rent was paid.

I am further satisfied that the tenant paid rent for April 2017 and had the right to possess the unit until the tenancy legally ends in accordance with the Act.

I find the landlord breached the Act, as a landlord may only end a tenancy in accordance with section 44 of the Act. I further find that the landlord breached the Act when they locked the tenant out of the rental unit. Therefore, I find it appropriate to make the following orders.

**I order the landlord** to return the basement unit to the tenant **immediately**. I grant the tenant an order of possession for immediate possession, should the landlord fail to comply with my order pursuant to section 54 of the Act.

**I further order the landlord** is to immediately provide a key to the basement unit to the tenant. Should the landlord fail to comply with my order, I authorize the tenant to change the locks and deduct the amount of the receipt from a future rent payable.

Conclusion

The landlord breached the Act. The tenant's application for an order of possession is granted.

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: April 27, 2017

---

Residential Tenancy Branch