



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LRE, O

### Introduction

This hearing was convened by conference call in response to the Tenant's Application for Dispute Resolution (the "Application") to suspend or set conditions on the Landlord's right to enter the rental unit. The Tenant also applied for 'Other' issues.

The Landlord, the Tenant, and two assistants for the Tenant appeared for the hearing. Only the Landlord and Tenant provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Application by personal service as well as the Tenant's handwritten submissions. The Tenant confirmed receipt of the Landlord's binder of photographic and documentary evidence served prior to this hearing. However, that evidence was not made available to me by the Residential Tenancy Branch prior to this hearing. As a result, I allowed both parties to reference this evidence during the hearing and I informed the parties that I would make my findings in this matter after I had recovered the Landlord's evidence for consideration before making this Decision.

The parties were informed of the hearing process and no questions were asked. The parties were also given a full opportunity to present their evidence, make submissions to me, and to cross examine the other party on the evidence provided.

### Issue(s) to be Decided

- Does the Landlord have to provide proper written notice to enter the residential premises?
- Has the Landlord harassed the Tenant?

### Background and Evidence

The Landlord explained that this residential property is a lodge of three bedrooms and common areas comprising a kitchen, bathroom and a lobby area and that he is the

property manager in this dispute. The bedrooms are rented to three renters under separate tenancies, and the Tenant currently rents room number three. The Landlord testified that the common areas are shared between the renters and other vacation travellers who use the residential premises on which the lodge is located on.

The Landlord testified that the Tenant originally rented another room in the same residential property for which she paid a security deposit and signed an intent to rent form. The parties were unable to confirm the amount of the security deposit and the date it had been paid. The Landlord did not provide a copy of any signed document pertaining to the previous room the Tenant occupied but stated that this agreement informed the Tenant that her rent amount was just for the room.

In December 2014 the Tenant moved to bedroom number three, which is much bigger, and currently pays rent for that room in the amount of \$400.00 on the first day of each month. However, the parties did not sign a tenancy agreement for room number three, although the Landlord testified that he had prepared one.

The Tenant confirmed that she is renting bedroom number three from the Landlord at a rent amount of \$400.00 per month which she had been paying. The Tenant confirmed that she shares the kitchen and bathroom facilities with the other renters who were renting rooms from the Landlord under separate tenancy agreements. However, the Tenant submitted that the sharing of the kitchen and bathroom excluded the Landlord and therefore, the Landlord is required to give proper notice to enter the residential property. The Tenant confirmed that the Landlord has not affected any entry into her room and that her access to the room is gained by her own key and a separate doorbell going from the lodge entrance door to her room.

The Tenant pointed to a document provided by the Landlord to her titled "Room rental agreement March 2017" which lists a number of rules the renters in the lodge are required to adhere to. One of the rules states that the shared areas will be on occasions used by the Landlord and other tenants. The Tenant explained that she refused to sign this "rules" sheet because her understanding was that only her and the other two renters had exclusive use of the kitchen because the Landlord has his own kitchen in a separate dwelling located on the same property as the lodge.

With respect to the Tenant's Application for "Other" issues, the Tenant testified that the Landlord has been coming into the common areas of the residential property on several occasions without notice and harassing her by making comments about the state of the common areas and her requirement to keep them clean. The Tenant stated that the

Landlord is not giving proper notice during these entries and that his reasons and conduct are causing her disturbance.

The Tenant testified the Landlord has been harassing her about paying rent and not giving her receipts for rent payments she has made. On one occasion, the Tenant called the police about the Landlord's harassment during a hockey game she was watching in the common area of the lodge. When the police attended they advised the Tenant to take the matter up through this Application.

The Tenant testified that the Landlord also entered the kitchen area complaining to her about leaving the doors wide open in her bedroom and that this was causing the Landlord excessive utility costs. The Tenant stated that she had her doors open only to air her room out. The Tenant stated that the Landlord also comes into the kitchen area to do cooking which he should not be allowed to do.

The Landlord responded stating that when the Tenant started to rent at the lodge, it was made clear to her verbally that the kitchen area was a common area to be shared by all the renters with the Landlord and at no time was the Tenant or the renters given exclusive access to the common areas of the lodge. The Landlord explained the residential property consists of camp grounds for recreational vehicles, the owners of which also have use of these common areas which are independent of the rooms within the lodge.

The Landlord stated that he had provided the rules document to all three of the renters, including the Tenant, because he wanted to record and make it clear what the terms of the tenancy were which had been originally agreed upon. The Landlord stated that he did this on the advice of the police when they were called by the Tenant. The Landlord stated that the other two renters have signed this document but the Tenant has not. The Landlord testified that the common areas are not for the exclusive use of the Tenant or the other two renters.

The Landlord testified that he has entered the kitchen area to use the kitchen facilities on many occasions only to find the Tenant has caused a mess which he told her to clean up. The Landlord explained that the Tenant has cats which are causing damage to common area property and the kitty litter is making a mess to the common areas and in the kitchen which is unhygienic. The Landlord provided photographic evidence showing cats in the common areas. The Landlord stated that he has received complaints about this which he was attempting to address with the Tenant and denies that these requests were bullying and harassment.

The Landlord denies harassing the Tenant submitting that he was giving verbal warnings to the Tenant to clean up the common areas for the mess she had made. The Landlord stated that he had confronted her about leaving her bedroom door open as this was a safety issues for the other renters.

The Tenant testified that she has three cats and that she cleans up after them. The Tenant explained that the Landlord has given her a notice to end tenancy for unpaid rent and that she has paid the rent for which the Landlord is not giving her a receipt for.

The Landlord submitted two rent receipts which he had given to the Tenant which he submitted as evidence that he does provide rent receipts to the Tenant. The Landlord confirmed that he is pursuing the notice to end tenancy for unpaid rent through the dispute resolution process because while the Tenant has paid rent she is still in arrears for \$50.00 for a previous month which is still unpaid.

The Tenant testified that the Landlord is withholding her mail. The Landlord stated that the Tenant's mail gets delivered to his mail box after which he delivers it to the Tenant. The Landlord explained that he cannot always get to his mail when the Tenant wants it but provides the mail as soon as he can do so. The Landlord submitted this is not withholding of mail.

### Analysis

The Act provides for the following definitions:

- a rental unit is a living accommodation rented or intended to be rented to a tenant;
- a common area is any part of the residential property which is shared by the tenants or by a landlord and one or more tenants;
- a residential property is
  - a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
  - b) the parcel or parcels on which the building, related group of buildings or common areas are located,
  - c) the rental unit and common areas, and
  - d) any other structure located on the parcel or parcels;

Based on the foregoing definitions of the Act, I make the following findings on the Tenant's Application to set conditions or suspend the Landlord's right to enter the rental unit.

In this case, it is undisputed that the Tenant rents a single room under a tenancy agreement. That agreement does not cover other renters who rent from the Landlord under separate agreements for their respective rooms and therefore, the renters and the Tenant cannot be collectively considered co-tenants renting under a single tenancy agreement.

It is clear to me that the Tenant does not have exclusive use of the kitchen facilities in the lodge for herself since it is undisputed that the Tenant shares the kitchen with other renters in the lodge. Therefore, I find the Tenant's room is the rental unit and the kitchen area is a common area on the residential property.

Section 29 of the Act prohibits entry into a rental unit unless proper written notice is given. The Act is specific in that the need for written notice of entry pertains specifically to the rental unit. Policy Guideline 7 titled Locks and Access states the following:

*"The Residential Tenancy Act does not require that notice be given for entry onto **residential property**, however, the Act recognizes that the common law respecting landlord and tenant applies. Therefore, unless there is an agreement to the contrary, entry on the property by the landlord should be limited to such reasonable activities as collecting rent, serving documents and delivering Notices of entry to the premises."*

[Reproduced as written]

It is undisputed that the Landlord has not affected illegal entry into the Tenant's room. Therefore, I find the Landlord has not illegally entered the Tenant's room. Accordingly, I find there is no requirement for the Landlord to give written notice to the Tenant for entry into the kitchen since this forms part of the common area of the residential property.

With respect to the Tenant's Application for the Landlord's use of the kitchen, the Tenant has failed to provide sufficient evidence that the usage of the kitchen provided to her under this oral tenancy is solely for her and the other renters use. The Tenant bears the burden to prove this claim and I find that there is insufficient evidence before me that the Landlord's entry and use of the common areas of the lodge should be restricted. However, the Landlord is put on notice that from now on any alleged breach of the tenancy by the Tenant should be either addressed with the Tenant in writing through a breach letter and/or through a notice to end tenancy.

With respect to the Tenant's Application pertaining to alleged harassment and bullying, I find the Tenant's oral evidence and written submissions alone are not sufficient to convince me that the Landlord's actions amounted to harassment and bullying. A

landlord has the right to address an issue with a tenant pertaining to a tenancy and if the parties are unable to resolve their dispute, both parties have remedy under the Act.

In this case, I find the Tenant presented insufficient evidence that the Landlord's actions in dealing with the complaint issues in this tenancy went above or beyond that of asking for corrective action. In this respect, I dismiss the Tenant's claim.

The Tenant's evidence was not sufficient to show that the Landlord is withholding the Tenant's mail with malice or ill intent. The Tenant has not proved that the delay in getting the mail to her by the Landlord can be considered a breach of the Act or that it amounts to bullying or harassment.

With respect to the Tenant's claim that the Landlord is not issuing rent receipts, I decline to make any findings in this matter. This is because the Landlord is in the process of pursuing a notice to end tenancy for unpaid rent which relates to the issue of rent receipts. Therefore, I find that any findings I make on this matter now may be premature and should be more appropriately dealt with through the notice to end tenancy.

### Conclusion

I dismiss the Tenant's claim to limit the Landlord's right to enter the residential property. The Tenant has failed to show that the Landlord has bullied or harassed the Tenant. Therefore, the Tenant's Application is dismissed without leave to re-apply.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 2, 2017

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Residential Tenancy Branch