



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OLC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The tenants both attended the hearing, one of whom gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord attended the call. The landlord has provided evidentiary material for this hearing to the tenants and to the Residential Tenancy Branch. The tenant testified that the landlord was served with the Tenant's Application for Dispute Resolution and notice of this hearing by registered mail on April 29, 2017 and orally provided a tracking number. The tenants were permitted to provide to me by facsimile proof of such service after the hearing had concluded, being a Canada Post cash register receipt and a Registered Domestic Customer Receipt. I have now received 2 Registered Domestic Customer Receipts, one of which is addressed to the landlord. Considering that evidence, the testimony of the tenant, and the evidence received by the landlord, I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

### Background and Evidence

The tenant testified that this fixed-term tenancy began on November 1, 2015 and expired on October 31, 2016, thereafter reverting to a month-to-month tenancy, and the tenants still reside in the rental unit. Rent in the amount of \$1,300.00 per month is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$650.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling, and the tenants rent the house and yard, but not the detached shop on the rental property. A copy of the tenancy agreement with a 1 page Addendum has been provided by the landlord. The landlord resides in a suite on the property next door to the rental home.

The tenant further testified that the landlord has required the tenants to pay rent in cash but has never given receipts except for the payment of the security deposit. The tenants asked the landlord about paying by post-dated cheques, but the landlord refused. The tenants seek an order that the landlord provide receipts retroactive to the beginning of the tenancy and for future rent paid, or accept post-dated cheques.

The tenants also seek an order that the landlord not attend on the property or enter the rental unit without giving proper notice. The landlord has been in the rental unit on numerous occasions, as told to the tenants by a neighbour. Also, the tenants arrived home one day to find the kitchen table moved, chairs stacked, and a door left open.

After serving the landlord with the hearing package for this hearing, the landlord said he would make arrangements to evict the tenants and parked his truck and trailer in the tenants' parking spot. Although the tenancy agreement doesn't include parking, the tenants have used that spot, which is designated at the rear of the home, since the beginning of the tenancy. There were no issues with parking until the tenants filed the application for dispute resolution. The landlord has also taken away the garbage cans.

### Analysis

Firstly, the *Residential Tenancy Act* does not provide for a landlord requiring any particular method for the payment of rent unless it is set out in the tenancy agreement. The tenant is required to pay rent when it is due, regardless of the method. The *Act* also specifically states that a landlord must give a receipt for payments made in cash. Therefore, I order that the landlord provide all previous rent receipts to the tenants forthwith. I have reviewed the tenancy agreement and no term exists specifying how rent is to be paid, and therefore, I order the landlord to accept the payment of rent in the method chosen by the tenants.

Where a tenant rents property from a landlord; it is the home of the tenant, not of the landlord, until the tenancy ends. I am certain the landlord would not be agreeable to the tenants entering the landlord's home when the landlord is not present. I accept the undisputed testimony of the tenant that the landlord has entered the rental home on numerous occasions when the tenants were not home. I order the landlord to comply with the *Residential Tenancy Act* as follows:

### **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).

With respect to parking, the tenancy agreement does not specify that parking is included in the rent, however I accept the undisputed testimony of the tenant that the landlord has parked a truck and trailer in the designated parking spot that the tenants have been using since the beginning of the tenancy, well over a year ago. A landlord may not remove or restrict a service or facility without giving the tenant notice and reducing rent accordingly. The *Act* also states:

**Tenant's right of access protected**

- 30 (1) A landlord must not unreasonably restrict access to residential property by
- (a) the tenant of a rental unit that is part of the residential property, or
  - (b) a person permitted on the residential property by that tenant.

The tenant did not testify that access has been restricted, nor have the tenants applied for monetary compensation with respect to parking, but seek an order to recover the parking spot they had. I also accept the undisputed testimony of the tenant that the parking spot was taken over by the landlord after the tenants served the Tenant's Application for Dispute Resolution. It certainly, in the evidence before me, appears to be retaliatory. The same applies to the garbage cans. I order the landlord to make the designated parking spot available for the tenants' use immediately, and return the garbage cans.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee. I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, I hereby order the landlord to provide all previous rent receipts to the tenants forthwith and for any money received by the tenants in cash in the future.

I also order the landlord to accept any method of the payment of rent that the tenants choose.

I further order the landlord to comply with Section 29 of the *Residential Tenancy Act* as set out above.

I further order the landlord to make the designated parking spot available for the tenants' use immediately and return the garbage cans.

If the landlord fails to comply with any of the above orders, the tenants will be at liberty to make a further application.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 as recovery of the filing fee, and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

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: June 05, 2017

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Residential Tenancy Branch