



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNC, LAT, OLC, OPT, AAT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- more time than prescribed to dispute a notice to end the tenancy;
- an order cancelling a notice to end the tenancy for cause;
- an order permitting the tenant to change locks to the rental unit;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement.
- an Order of Possession of the rental unit for the tenant; and
- an order that the landlord allow access to and from the rental unit.

The hearing was conducted over several dates, and the parties both appeared and both were represented by legal counsel, who both gave lengthy opening submissions and brief closing submissions. The landlord and the tenant each gave affirmed testimony and were subject to cross examination. The landlord called 3 witnesses and the tenant called 2 witnesses all of whom gave affirmed testimony. The tenant's witnesses were called out of order so that the witnesses would not be inconvenienced.

After the first scheduled date, my Interim Decision was provided to counsel for the parties in which I found that the Residential Tenancy Branch has jurisdiction to hear and decide on the applications of the tenant. I also found that the tenant should be granted, due to the circumstances and evidence, more time than prescribed to dispute the notice to end the tenancy.

During the course of the hearing the tenant withdrew the applications for an Order of Possession in favour of the tenant, and for an order that the landlord allow access to and from the rental unit.

The parties agree that evidentiary material has been exchanged, however the landlord continued to provide evidentiary material after the hearing had started, and only the evidence that has been provided in accordance with the Rules of Procedure is considered in this Decision.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?
- Should the tenant be permitted to change the locks to the rental unit?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically with respect to giving notice to enter or inspect the rental unit?

### Background and Evidence

**The parties agree** that this fixed term tenancy began on February 10, 2017 and expires on February 28, 2018 at which time the tenant is required to vacate the rental unit unless the parties enter into another agreement. The tenant still resides in the rental unit. Rent in the amount of \$10,500.00 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 from the tenant 5 month's rent in advance and a security deposit in the amount of \$5,250.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided as evidence for this hearing.

**The landlord** testified that a move-in condition inspection report was completed on February 13, 2017 and a copy has been provided as evidence for this hearing. It is signed by a landlord and by a tenant, wherein the report shows that the tenant agrees with the report. It took 3 ½ hours to complete. The tenant and the landlord's rental manager attended; the landlord didn't need to attend because the rental home was in brand new, beautiful shape.

The landlord further testified that the Addendum to the tenancy agreement contains a term that states: "If repairs are required, Tenant agrees to call Landlord first so he may arrange a repairman of his choice to the Premises and who will repair and assess the problem. If that problem is Tenant caused, Tenant shall pay the cost of parts, repair or if required replacement." The tenant has not complied with that term and has called other professional contractors or technicians during the tenancy.

On May 10, 2017 the first formal inspection was done by the landlord, which was not attended by the tenant, but the tenant was represented by 2 lawyers at that inspection. The landlord found various deficiencies and detailed them in a report which has also been provided for this hearing, as well as photographs taken during that inspection.

The landlord also attended the rental unit due to various service calls by the tenant, and for regular inspections. Notices to inspect were not only emailed, but also hand delivered, and the tenant said she didn't want anything taped to the door, but rather, placed in the mailbox. The landlord testified that a lot could have been dealt with on the phone, but emails aren't answered right away, making it difficult to schedule tradespersons. One contractor had been doing maintenance projects for the landlord for several years. However the tenant pushed back on several occasions. On all occasions the tenant was given notice.

The tenant held a weekend long party, and upon inspection with personnel from a restoration company on August 18, 2017 the landlord noticed a yellow residue on the fireplace. Cleaning it made it worse. The landlord met with personnel from a restoration company to assess the damages. There's a minimum of 15 wine stains on the carpet in the house, which is an expensive wool carpet. The landlord is not certain whether or not the tenant has had someone clean the stains.

The landlord retained the services of a second property restoration company to report on damages because the landlord is not a professional and not able to recognize wear and tear. Copies of the reports have been provided as evidence for this hearing, and the landlord testified that he relies on what the reports say.

The landlord testified that on or about August 24, 2017 the landlord served the tenant with a One Month Notice to End Tenancy for Cause by registered mail. The landlord traced the package and noticed that it wasn't picked up, and the landlord's legal counsel agreed to forward it to the tenant's legal counsel. Copies of the notice and the tracing results have been provided as evidence for this hearing. The One Month Notice to End Tenancy for Cause is dated August 25, 2017 and contains an effective date of vacancy of September 30, 2017. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to;
  - damage the landlord's property;
  - adversely affect the quiet enjoyment, security, safety or physical well being of another occupant;
  - jeopardize a lawful right or interest of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- Tenant has not done required repairs of damage to the unit/site;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's rental manager sent an email to the tenant referring to possibly selling the rental home. Sometime in September, 2017, after the One Month Notice to End Tenancy for Cause was issued, the landlord was told by 2 realtors that they couldn't sell it the way it is and to wait until the tenant moves out. The realtors said it would be better if the home was in better shape and would be easier to sell without tenants. The market is good and the landlord hopes to sell before the house beside it sells. The landlord cannot sell it until the tenant has vacated or on March 8, 2018, and the landlord doesn't want \$175,000.00 worth of damages existing at the end of the tenancy, which is close to the amounts set out in the restoration reports.

**The landlord's first witness** (SS) testified that he has been employed with the landlord's company for about 2 ½ years. His duties are to forward correspondence between the landlord and the tenant by email, and serving notices of inspections. His duties also include being present for all inspections of the rental unit and to take photographs since the beginning of this tenancy, but has not been at the rental unit every time the landlord has been there.

The witness also testified that he keeps notes about which notices to the tenant were delivered by hand on an internal copy, and he emailed each one to the tenant each time. The notes show the landlord, or another employee of the landlord delivered some either personally or placed them in the mailbox or taped to the door of the rental unit. The landlord's maintenance fellow has attended the rental unit multiple times during the tenancy as well as other individuals on behalf of the landlord and various contractors.

**The landlord's second witness** (LG) testified that he is employed by a restoration company as Executive Assistant and has been so employed for almost 11 years. The company generally completes restorations for insurance companies, and look at whether or not damage is caused by flood,, break and enter, a house party, and to determine if damage was pre-existing.

On October 23, 2017 the witness attended a site visit at the rental home with the co-owner of the company he is employed with, and again on November 30, 2017 with a project manager. The witness is a project manager who assesses damage, but in this case, the co-owner took over the file. The witness did the inspection on October 23, 2017 with the co-owner of the company to come up with pricing. The witness was responsible for drafting a report, which had been started by someone else, and because the employer is ultimately responsible, the co-owner signs off on it.

A copy of the report has been provided as evidence for this hearing, which also mentions inspections on August 18 and September 13, 2017, but the witness had not attended the rental home on either of those occasions.

The witness testified there was extensive damage far beyond wear and tear. The bigger items were discoloration and a chip to the fireplace on the main floor and in the basement; damage to carpets and doors. The doors are all high-end and must be repaired in a shop, in a controlled environment. The laundry door handle is broken, the bathroom door didn't close properly, the pin ball machine had dents and scratches, the kitchen soap dispenser was broken off, blinds

were torn and ripped in many rooms and there was damage to the concrete. The most costly repair will be the fireplace, carpet, exterior landscape and blinds. The report shows a total cost of \$174,277.50 as of the date of the report, however each time the rental home was inspected, there was more damage, and the final total won't be known until the tenancy ends. The practice for completing the reports is for the worst case scenario.

The company's co-owner was in charge of all pricing and some of the estimates by pricing with sub-tradespersons and received 3 quotes from contractors for the fireplace replacement. The witness has read the move-in condition inspection report, and testified that the scrapes/gouges to its face existed at the beginning of the tenancy, but it now also has a scratch, and having worked for insurance companies and completed hundreds of reports, the witness believes it would be unlikely for an insurance company to pay full replacement costs.. Some of the pricing was estimated through the witness' and the co-owner's general practice. Numerous photographs have been provided as evidence for this hearing, and the witness testified that if he saw something and didn't take a photograph, he didn't think it was significant, and agreed that throughout the report some items mentioned also show that they could be cleaned or spot repaired.

The company brought in someone to remove a tire scuff on a wall panel, and it is possible it may have worked absolutely, but will have to wait to see. Also, damage to a railing leading to the back yard is mentioned in the report and the report recommends cleaning. The corresponding photograph appears to be tape residue. The same applies to chalk marks on an exterior wall. The report comments on what it would take to get the item to pre-tenancy condition, and the witness can't comment on what's trivial as part of his job. Where mentioned in the report as cleaning required, that would be attempted, but not by the witness, and there was no conversation with the tenant with respect to cleaning them after any visits. Also, the tiles at the front of the house may need to be fully replaced in order to match other tiles. However, if before the tenancy a crack existed, the issue of matching was already a problem.

**The landlord's third witness** (MH) testified that he installed roller shades in the rental home about 7 or 8 years ago, and has also attended again in October and in November 2017 after the landlord asked the witness to inspect and replace. The blinds are operated by remote control. A number of the blinds, mostly the black-out ones were damaged beyond wear and tear, and some had fabric missing. One shade had a liquid spilled on it, and it appeared that the liquid was spilled on the sill and was not cleaned. At least 2 were not rolled up but bunched up, and a number of fabric bands and shade bands had tears and perforations likely caused by incorrect and repeated operation rather than reporting the problem and having it repaired. Care has to be taken opening windows. No obstruction was noticed.

The blinds were installed a long time ago, and the witness completed an adjustment due to squeaking during the break-in period and after warm weather. There have been no reports since to his knowledge.

The witness also testified that if installed incorrectly that could contribute to a malfunction, or wiring that had not been properly installed could possibly cause it to tangle up. However, once adjusted after the break-in period, they're pretty sturdy.

**The tenant** testified that the rental home is a 3-level, 4500 square foot house, and the tenant pre-paid rent for the first 5 months of the tenancy. One of the terms of the tenancy agreement is that the landlord may inspect the rental home with 24 hours notice to the tenant by phone, but believes there is another term that says inspections will be set by agreement of the parties. The tenant recalls agreeing to an inspection every other month.

The tenant has 2 fulltime housekeepers and 3 children. Messes get cleaned up and there are currently no stains on the carpets. The tenant has agreed to clean and repair minor things, but testified that \$174,000.00 is ridiculous, and the landlord has estimated replacement for things that just had not been cleaned yet at the time of inspection.

The tenant's reluctance to let the landlord attend the rental unit was a result of the landlord arriving so often that it became quite hideous, and he was rude to the tenant's staff. The landlord would also tell the tenant he was going to be there and the tenant and her staff would clean up, but about half of those occasions the landlord didn't show up. The tenant had agreed at the outset of the tenancy to inspections every 2 months, but he has been there at least 25 times or more, and the tenant's staff complained about his chatting for a lengthy time and making inappropriate suggestions and demands. Not all of the landlord's visits were for inspections, but some were service calls at the tenant's request.

On one occasion the landlord left 40 or 50 little pieces of tape all over the house to signify his demand that the house had to be painted and all carpets had to be replaced. The tenant couldn't see anything damaged where the tape was, not even paint chips. On another occasion the tenant had left the door of the office in the rental home open and the landlord entered without knocking without any notice to the tenant, walked right past the tenant, up the stairs. He spoke to the tenant about a carpet stain and later made several calls to the tenant about who to call to have it cleaned.

The tenant tried to limit the landlord's attendance, but not that of contractors.

Early in the tenancy the tenant told the landlord's rental manager that the soap dispenser wasn't working, and a month later the faucet stopped working and it splashed when turned on. The landlord didn't send someone over for awhile, and the tenant's employee advised the tenant that the landlord told the employee she had to tell the plumber that it was the tenant's fault that it broke. The tenant called the plumber who advised that he wasn't permitted to talk to the tenant at the request of the landlord, and the landlord wouldn't allow the tenant to call another plumber. There had been absolutely no abnormal use, the landlord never had it fixed despite several requests, and the landlord later said that the tenant broke it.

The tenant has endeavored to use the landlord's contractors, but it seemed like the boiler broke down every week. There was a sticker with contact information for a contractor left on the furnace and the tenant instructed one of her employees to get someone to fix it. There was also a monthly issue with the air conditioning system and the employee called the same company. However, the contractor refused to service it again because the landlord had demanded so much information from him the contractor refused to do any further work at the rental home.

The landlord also told the tenant's employee that she was stupid to allow water to pool on the floor and that he would call a restoration company and charge the tenant thousands of dollars after the first time the air conditioning didn't work. The repair person called the tenant's employee later saying that the way the house was constructed, the drain isn't placed right causing water on the floor.

The tenant also testified that the landlord told the tenant that a tile at the front door was broken before move-in and said he'd repair it but didn't. Then the landlord noticed another crack during an inspection. The tenant told the landlord she would pay for one, but the landlord said he wouldn't fix any because the entire front porch needed to be done and sent quotes for that to the tenant. The tenant didn't respond realizing that the landlord wasn't entitled.

The landlord also sent the tenant a close-up photograph of the outside gate, making damage look big. The tenant went to look and saw a small discoloration and asked a friend to paint it. The landlord told the tenant she would have to pay \$1,500.00 to paint the entire gate, however the tenant testified that it looks like normal wear and tear. A photograph has been provided as evidence for this hearing.

Before moving in the landlord told the tenant that a blind was missing upstairs that had to be replaced. He said they were finicky and spent time showing the tenant how to use the remote control and cautioned about opening the door with the blinds down to prevent damage. Within a week of living there, the tenant's child had a problem with the blind and said that it buckled up. The landlord said that the tenant had to replace it so the tenant paid about \$3,000.00. However, the blind in the tenant's bedroom also started to buckle due to nothing that the tenant had done wrong. After seeing it, the landlord started to insist on entering the tenant's bedroom on a Saturday morning with a repair person, but the tenant didn't agree and found it unreasonable. The landlord was so aggressive about being there on a Saturday morning the tenant said she would call the police. The tenant asked to meet the contractor for the blinds, but the landlord refused so the tenant called another company, and was told that the blinds were improperly installed. The tenant also paid for a broken patio door.

The downstairs fireplace had a smudge, not a scratch. After the tenant received the One Month Notice to End Tenancy for Cause, the tenant called someone to inspect who noticed residue and said he could clean it with a special cleaner. According to a contractor that the landlord worked with, a scratch appeared on the upstairs fireplace, but the tenant wasn't able to see one or a crack. Looking really close, there's a crack, not a scratch which was apparently there before the tenant moved in and is noted in the move-in condition inspection report.

Power washing the chalk marks has been completed since the notice to end the tenancy was issued.

The tenant also has a high-end trampoline designed for safety which the landlord agreed at the beginning of the tenancy to have it placed on the driveway. Later the landlord's rental manager mentioned a 1-inch rust stain and asked the tenant to move the trampoline. The tenant found it to be harassing and offered to put something under it but neither the landlord nor the landlord's rental manager would respond.

The tenant further testified that none of the notices to inspect the rental unit were hand-delivered to the tenant.

The tenant also testified that on August 1, 2017 the tenant had a party at the rental property. Police arrived at some point and asked the tenant to turn down the music and the tenant did so. No charges resulted, the police did not return, and there were no other complaints.

**The tenant's first witness** (NS) testified that she is a housekeeper and nanny for the tenant, and was present during an inspection by the landlord on May 10, 2017. The landlord went around to each room with a Dictaphone stressing what was wrong and made it a very stressful situation for the witness, including totalling what the overall costs would be. It seemed that the landlord was most concerned about walls, blinds and furniture, but there wasn't really much damage and could have been wear and tear. Marks on a wall were a major issue to the landlord, but all came off with a cloth and water. It was overwhelming, and every room had something wrong, and the landlord gave the witness a number of \$50,000.00 at the end of the inspection without any basis.

A month later, the landlord also inspected and made very inappropriate comments to the witness. The witness was present for 3 visits by the landlord and his demeanor was not appropriate.

The witness is not aware of any of the damages that the landlord has complained of.

**The tenant's second witness** (CW) testified that she has been an employee of the tenant for almost a year and manages the house the tenant rents, and takes care of the tenant's children, among other tasks.

The witness first met the landlord during the first inspection. The landlord introduced himself to the witness and asked the witness inappropriate questions about her marital status.

The witness and the landlord completed an inspection in March, 2017 wherein the landlord pointed out damages that were not damages. The rental home was in immaculate condition.

The landlord returned in April, walking in without knocking and noticed a minor stain on the carpet upstairs near a child's bedroom and swore in the presence of the child.



Another inspection in the summer was tense. The landlord charged up to the witness' face, pointed in the witness' face and swore about entering into a bedroom in the presence of 4 or 5 contractors who also appeared to think the landlord was aggressive. The landlord wanted measurements and the witness suggested he obtain them from his binder.

The landlord attended the rental home monthly for inspections which took about 2 ½ hours.

The witness also testified that there are remote controls for each of the blinds on the 3 floors, and each has 2 layers of blinds. The remote control is quite simple, having 3 buttons: an arrow to the top, one to the bottom with a button that says "MY" and 4 options for black-out or shaded blinds, and they retract up or down. The witness believes that they were damaged before the tenancy because black-out blinds are quite heavy and wrap around a rod to control up or down direction. The fabric needs to be sealed or glued properly to work. The witness obtained a second opinion, and a professional blind technician said that the quote by the landlord was extremely over cost and that they had not been glued properly. The technician also demonstrated and ran his finger across the fabric which was folded over where it should have been glued, and it came un-sealed.

### Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons are in dispute, which are:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to;
  - damage the landlord's property;
  - adversely affect the quiet enjoyment, security, safety or physical well being of another occupant;
  - jeopardize a lawful right or interest of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- Tenant has not done required repairs of damage to the unit/site;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The only evidence of a disturbance is during a party on August 1, 2017. The tenant testified that the music was turned down immediately upon request of the police officer and there were no further complaints. That testimony is not disputed by the landlord.

There is no evidence of the tenant jeopardizing the health or safety or lawful right of anyone, unless the landlord relies on the tenant's refusal or reluctance to allow the landlord frequent visits. However the *Residential Tenancy Act* permits a landlord to inspect monthly with written notice to a tenant, and the *Act* specifies how that is to happen.

There is no evidence of illegal activity. The landlord relies on a by-law, but I find that it is not sufficient for ending a tenancy particularly where no by-law infraction was issued.

The landlord has provided 2 reports of restoration companies which I find to be totally unreliable for the purposes of ending the tenancy. The witness who wrote one of the reports testified that each of the items were worst case scenarios, and even if noted to be dirty, shows replacement cost. The report says nothing about whether or not the writer ever heard of "Goo Gone" or "Mr. Clean Magic Sponges." I find that the tenant has acted in good faith by paying the landlord money for some damages to blinds and to the patio door. I also find that the landlord has acted in poor faith throughout the tenancy with respect to demands and entering the rental unit. I accept that it's a high-end rental home with expensive and possibly extravagant finishings, but the landlord issued the notice to end the tenancy citing extraordinary damage without any knowledge of whether or not stains in the carpet could be removed, or tape residue on a railing, or chalk on a wall. I do not accept that the landlord has established extraordinary damage sufficient to justify ending a fixed term tenancy.

A tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear at the end of the tenancy, and this tenancy has not yet ended. The tenant and witnesses testified that some repairs have been made, and I'm not clear what repairs the landlord expected at the time that the One Month Notice to End Tenancy for Cause was issued beyond the extravagant worst case scenario reports.

Having found that the landlord has not established extraordinary damage, I am also not satisfied that the landlord has established that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

With respect to the allegation of a breach of a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so, the landlord testified that the tenant contacted other contractors and technicians. I find that the tenant did so out of frustration with the unreasonableness of the landlord's demands and obsessive behaviour respecting the rental home.

The One month Notice to End Tenancy for Cause is hereby cancelled and the tenancy continues.

The *Residential Tenancy Act* protects a tenant's right to privacy during a tenancy, and specifies that a landlord may not enter a rental unit except in certain circumstances:

**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).

The *Act* also provides that notices served by posting to the door or leaving in another conspicuous place are served 3 days after such posting. The parties and witnesses gave plenty of testimony with respect to notice, and I am not satisfied that the landlord has complied. I order the landlord to comply with Section 29 and ensure that sufficient notice is given to the tenant taking into consideration time for deemed service prior to entering the rental unit or the residential property, and may do so monthly.

Considering the landlord's right to be able to enter the rental property for a purpose set out in Section 29, I also find that such an order is sufficient for the purposes of the tenant's application, and, I deny the tenant's application for an order permitting the tenant to change the locks to the rental unit.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee, and I hereby grant a monetary order in favour of the tenant in that amount.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated August 25, 2017 is hereby cancelled and the tenancy continues.

I hereby order the landlord to comply with Section 29 of the *Residential Tenancy Act* as set out above and to consider the deemed service provisions when scheduling inspections or entry for other purposes as set out in Section 29.

I hereby grant a monetary order in favour of the tenant 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.

The tenant's application for an order permitting the tenant to change the locks to the rental unit is hereby dismissed.

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: December 27, 2017

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Residential Tenancy Branch