



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OLC, MNDC

### Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and for an Order requiring the Landlord to comply with the tenancy agreement and/or the *Residential Tenancy Act (Act)*.

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch on December 08, 2017 and December 22, 2017 were sent to the Landlords, via registered mail, although he does not recall the date of service. The Landlords acknowledge receipt of these documents.

On January 05, 2017 the Landlords submitted an affidavit to the Residential Tenancy Branch. Legal Counsel for the Landlords stated that this document was served to the Tenant, via registered mail, on January 05, 2018. The Tenant stated that he received the affidavit on January 09, 2018; he has had sufficient time to consider it; and he does not want an adjournment for the purposes of considering the affidavit. The document was accepted as evidence for these proceedings.

The Tenant stated that he served additional documents to Service BC on January 08, 2018, January 09, 2018, and January 10, 2018. He was advised that the evidence was not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure; that I did not have the evidence; and that it was, therefore, not being accepted as evidence for these proceedings. He was advised that he may refer to those documents during the hearing.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

### Issue(s) to be Decided:

Is the Tenant entitled to compensation for being unable to access the rental unit?

Background and Evidence:

The Landlords and the Tenant agree that:

- this tenancy began in 2016;
- on September 02, 2017 the Tenant was personally served with a One Month Notice to Ed Tenancy for Cause;
- the Tenant did not dispute the One Month Notice to Ed Tenancy for Cause;
- subsequent to a hearing on November 15, 2017, the Landlords were granted an Order of Possession; and
- neither party is certain of the effective date of the Order of Possession.

The male Landlord stated that the Landlords did not serve the Order of Possession to the Tenant. The Tenant stated that he received the Order of Possession, via registered mail, on January 09, 2018.

The Tenant stated that he vacated the rental unit on December 04, 2017 or December 05, 2017. He stated that he cannot recall why he vacated the unit, but he believes it was because on December 01, 2017 the police told him he would have to leave in a few days.

The male Landlord stated that he believes the Tenant vacated the rental unit on December 05, 2017 after this application to review the Order of Possession was denied.

The Tenant stated that he is seeking compensation for expenses associated to being unable to access the rental unit. He stated that on November 29, 2017 he attempted to enter the rental unit via the key pad on the front door, but was unable to open the door. He stated that this has happened to him in the past and he presumes the Landlords deactivated the door.

The male Landlord stated that they have did not interfere with the locking mechanism at the rental unit, they did nothing to prevent the Tenant from accessing the unit on November 29, 2017, and the Tenant did not ask them for assistance in accessing the unit on November 29, 2017.

The Landlords and the Tenant agree the Tenant had no difficulty accessing the rental unit when he attended with the police in early December of 2017.

Analysis:

Sections 31(1) of the *Act* stipulates that a landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Tenant has submitted insufficient evidence to establish that the Landlords prevented him from accessing the rental unit on November 29, 2017. In reaching this evidence I was heavily influenced by the male Landlord's testimony that they did not alter the locks in any way and by the absence of evidence that corroborates the Tenant's suspicion that the Landlords deactivated the door lock.

In adjudicating this matter I was influenced by the undisputed evidence that the Tenant was able to activate the lock when he attended the unit with the police in early December of 2017. I find this evidence tends to corroborate the Landlords' submission that the lock was not altered.

I find it entirely possible that the Tenant was unable to activate the lock due to an intermittent mechanical failure or due to human error.

As the Tenant has been unable to establish that the Landlords prevented him from accessing his rental unit on November 29, 2017, I dismiss his claim for compensation for any expenses arising from being unable to access his unit on that date.

Conclusion:

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

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: January 11, 2018

---

Residential Tenancy Branch