



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASTERA INVESTMENTS INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RP, OLC, ERP, RR, FF

### Introduction

The tenant applies for a repair order, an emergency repair order, an order that the landlord comply with the law or the tenancy agreement and for a rent reduction.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the relevant evidence presented during the hearing show that the landlord has failed in its obligations under law or the tenancy agreement and, if so, what is the appropriate remedy?

### Background and Evidence

The rental unit is a one bedroom, ground floor apartment in a 33 unit, four floor apartment building. The tenancy started in August 2014. Currently the monthly rent is \$920.00. The landlord holds a \$430.00 security deposit.

In August 2014 the tenant moved from the interior of the province, securing this accommodation sight unseen, but for a description and ten photos provided earlier by the landlord. A local disability group had referred him to this complex.

The tenant is 67 years old. At age three he contracted poliomyelitis. He has had no use of his lower limbs since then and is confined to a wheelchair.

The apartment is not wheelchair compatible or otherwise set up for use by disabled people. The tenant knew this before taking the rental unit. Neither the building nor the rental unit had been constructed to be wheelchair accessible. Nor was the rental unit an “adaptive suite,” an approach to housing design in which homes can be modified to meet the changing needs of an aging occupant.

As a result, most of the kitchen cupboards and the microwave are out of reach for him. He cannot turn his wheelchair around in the kitchen. A slight riser had been installed at the front door to permit him to wheel over the sill of the door. His wheelchair does not fit in the bathroom and so the landlord removed the bathroom door to facilitate access by the tenant. Even with this accommodation, to use the bathroom toilet the tenant must leave his wheelchair and crawl to the toilet and by his hands and arms lift himself onto it.

The tenant has had ongoing problems with the vinyl floor in his suite. It repeatedly tears, because, he thinks, the wheels of his wheelchair pop bubbles under the vinyl then the small broken area tears. A recent photo shows a jagged, open tear of approximately 25 cm in diameter. The landlord has repaired the flooring two or three times but the problem persists. It is inconvenient for the tenant because on occasion he crawls on the floor and the torn vinyl can scratch him. The landlord has a plan to replace the entire floor but it would require the tenant to be away for two and preferably three days.

The tenant says the Human Rights Commission has told him the floor in his rental unit should be wheelchair durable.

The tenant has had problems with the bathroom. He says the floor has had to be replaced, though it is not clear whether he had it done or the landlord. The toilet has leaked and the seat has broken. From the photos provided, it would appear that the seat breaks away from the two bolts anchoring it to the top of the bowl. The landlord replaced the seat a number of times but the tenant finally bought his own, sturdier seat.

The tenant has discovered a problem with his parking. At the start of the tenancy the tenant was assigned a parking spot in the disabled parking zone. While this spot is very close to his front door, it is not in the covered parking area. As a result, when it snows

the tenant has had difficulty getting to and into his car. He doesn't think the landlord is clearing snow as well as it should.

The tenant's rental unit is unique among the others. It has its own front door, separate but near the front door to the building and it has no rear door leading into a hallway or other parts of the common area of the building.

The tenant says that when he moved in the buzzer system at the building front door would ring his unit but that service is no longer working. He says that persons coming to the apartment building to see him and not knowing that his door is separate from the front door, cannot go to the buzzer system and contact him. He indicates he has lost homecare service as a result because the homecare providers would call at the building's front door but were unable to reach the tenant. As a result, after twenty unsuccessful visits, the service was discontinued.

The tenant says that when the lawn is mowed, there are grass clippings and dust left on his window.

The tenant complains that homeless people are coming around the outside of his rental unit. As well, the area around the garbage bin(s) is not being cleaned regularly enough. There is broken glass and other debris that harms his wheelchair.

Over the years he has had correspondence with the landlord about some of these issues but feels that the landlords are not responding promptly enough. He feels that his rent is increasing while the level of service provided by the landlord is decreasing.

In response Mr. D., a principle of the corporate landlord testifies that the building was constructed in 2013 and meets all code requirements then in effect.

He says that while there is no buzzer system for this unit, there was a sign at the front door directing people to the tenant's front door.

He says the landlord sent the tenant a lot of material prior to the tenancy and the tenant knew the rental unit would not be perfect for him but rented it nevertheless.

He notes that the tenant complained about the bathroom and about the thermostat and the fans and the landlord attended to their repair. He is the only tenant who has complained about thermostats or fans.

He considers that the floor damage in the unit is being caused by the tenant's wheelchair and that it exceeds reasonable wear and tear, though the landlord is prepared to re-floor the unit.

Regarding the garbage, Mr. D. says that the area is frequented by "dumpster divers," persons who scour garbage bins for useful items, and it is they who are making a mess. He says the landlord's workers conduct a daily walk around in the area. He says he has had no notice of any vagrants in the area.

Ms. H.A. for the landlord produces a certificate of occupancy issued by the local government as proof that the building is in full compliance with laws, bylaws and codes. She says there was and is no requirement that the apartment building be wheelchair accessible or "adaptable."

Like Mr. D. she thinks the tenant's floor damage is caused by his wheelchair and that it is beyond reasonable wear and tear. She notes that the flooring seller is balking at being responsible for damage caused by a wheelchair.

She notes that the tenant had a buzzer connection at the front door initially but he discontinued his land line for a cell phone. While the buzzer could be connected to the cell phone, the tenant's phone is registered in another city and so to buzz him from the front door of the apartment would incur long distance charges.

In response the tenant says his telephone service provider has told him it would not be a problem to connect him to the building buzzer.

## Analysis

### Duty to Accommodate

During the hearing the proposal was put forward that the landlord has a "duty to accommodate" the tenant's disability.

The 'duty to accommodate' is a legal requirement arising out of human rights legislation and case law in Canada. Although a "duty to accommodate" is not found in *the BC Human Rights Code*, R.S.B.C. 1996, c. 210, it is the BC Human Rights Tribunal that has the jurisdiction and expertise to enforce, and it does enforce, compliance with any duty to accommodate.

The Residential Tenancy Act provides by Section 78.1 that: "Sections 1, 44, 46.3, 48, 56 to 58 and 61 of the Administrative Tribunals Act apply to the director (and thus an arbitrator) as if the director were a tribunal and to dispute resolution proceedings under Division 1 of this Part and reviews under Division 2 of this Part." Section 48.3 of the Administrative Tribunals Act, [S.B.C. 2004] c. 45 provides:

Tribunal without jurisdiction to apply the Human Rights Code

46.3 (1) The tribunal does not have jurisdiction to apply the Human Rights Code.

(2) Subsection (1) applies to all applications made before, on or after the date that the subsection applies to a tribunal.

For this reason I find I am not able to consider any claim that the landlord has a duty to accommodate the tenant's disability.

### The Floor

The evidence shows that the tenant's floor is repeatedly being ripped and torn. I find it is being caused by the tenant's wheelchair.

The landlord knew that the tenant was wheelchair bound before it offered him a tenancy in this rental unit. In doing so I find that it implicitly represented that the floor would be compatible with wheelchair use; that it would be fit for the obvious purpose the tenant intended to make of it. Frankly, I find it unusual that any modern day vinyl flooring would not be compatible.

It would appear the landlord has been relatively diligent in repairing the tears as they occur. However, repairs are not solving the problem. The flooring is deficient for its intended purpose of flooring a rental unit used by a person in a wheelchair.

**I direct that within 60 days after the date of this order the landlord install a floor covering that will be compatible with wheelchair use. I direct that during the installation process the landlord house the tenant in accommodation of equivalent amenity at its cost.**

In the event of default the tenant may reapply for damages or rent redirection to pay for the repair or such other relief as might be appropriate.

### The Toilet

Having regard to the evidence I consider it most likely that the manner in which the tenant is relegated to use the toilet, by, climbing onto it, puts extra force on the toilet bowl and seat. There is no evidence that the toilet provided or the seats that have been replaced, were somehow defective in manufacture or installation.

In my view this is not a use of the bathroom that the landlord could reasonably have concluded to be incidental to use by a person in a wheelchair. I find that it was not an implicit term of the tenancy agreement that the toilet would be suitable or sturdy enough to accommodate the tenant's particular method of use.

I therefore decline to make any award or order regarding the toilet. I would recommend to the parties that if this tenancy is to continue they find a way to accommodate the tenant's use of the bathroom, perhaps by the installation of railing. However, I have no expertise in such matters and so decline any further suggestion.

## Parking

The pre-tenancy photographs sent to the tenant clearly show that his anticipated parking stall would be outside his door but not under cover. That was an amenity the tenant accepted and must live with.

A landlord is generally responsible for clearing snow from parking lots. I make no finding that it has not done so in a reasonable manner in the past, but **I direct that when clearing snow from the apartment building parking lot the landlord's workmen particularly clear the snow away from the entire portion of the tenant's parking stall and particularly, away from the sides of the tenant's vehicle if it is parked there.**

## The Game Room Common Area

I find that the game room common area in the apartment building was a facility offered as a feature to the tenant when he signed the tenancy agreement. I find that it was implicit that the tenant would not use the stairs down to the game room but would use a ground level door around the back of the building.

The tenant's access to the game room through the door is hampered by the fact that anytime he wishes to use the game room he must arrange for someone to open the back door to let him in. This significantly restricts his use of room.

**I direct that within thirty days the landlord provide the tenant with access to the apartment building game room in some manner compatible with wheelchair use, either a ramp down the stairs or by providing him with a key or other access through the back door that does not require the assistance of a second person, or such other method the parties may agree on.**

In the event of default the tenant may reapply for damages or rent redirection to pay for the creation of such access or for such other relief as might be appropriate.

## Door Buzzer

The buzzer was working and effective until the tenant discontinued his land line in the rental unit. The buzzer is compatible with cell phones and can be programmed to call the tenant's cell phone when someone buzzes him at the front door to the building.

I decline to make an order regarding the buzzer at this point because I'm unsure whether or not buzzing the tenant from the front of the apartment building incurs a long distance charge to the landlord. If it does then in my view it is beyond the landlord's responsibility to provide such a service or facility. I suggest that the tenant confirm with the service provider and through it to the landlord that there would be no such charge. In that event the landlord should properly reprogram the buzzer to permit persons at the front of the building to buzz the tenant.

## Thermostat and Fans

It appears on the evidence these matters have been resolved. I am unable to determine that the landlord did not attend to them within a reasonable time and so make no award or direction.

## Windows

Residential Tenancy Policy Guideline 1, "Landlord and Tenant – Responsibility for Residential Premises" provides that the landlord is responsible for cleaning the outside of the windows, at reasonable intervals.

If the landlord's lawnmower is throwing up dust and grass clippings onto the tenant's windows then that "reasonable interval" for cleaning would be right after the lawn mowing.

I decline to make any order regarding this item at this time, but with the foregoing finding, it is expected that when the landlord's workmen are cutting the grass in the vicinity of the tenant's rental unit they particularly inspect the tenant windows for cutting debris and clean them accordingly.

## Garbage Area and Transient People



The evidence presented does not prove that the landlord is neglecting its responsibility to keep common areas like the garbage bin area clean. I decline to make any order in this regard.

The landlord has little control over who might walk onto the apartment grounds at night. The property appears to be a relatively open one with no gates. I would recommend to the tenant that he call the police if he is being bothered by transient people near his rental unit.

#### Rent Reduction

In my view, up to this point the landlord has acted in good faith and with reasonable diligence in attending to the tenant's complaints and concerns and, with the clarity provided by this decision the parties should be able to conduct their landlord and tenant affairs on a more equanimous basis in future. I therefore decline to award any rent reduction or monetary recover at this time, but for the filing fee. Should the landlord fail to carry out the directions made in this decision, the tenant is free to re-apply for compensation or for a rent reduction.

#### Conclusion

The tenant's application is allowed in part.

**I direct that within 60 days after the date of this order the landlord install a floor covering that will be compatible with wheelchair use. I direct that during the installation process the landlord house the tenant in reasonably accommodation of equivalent amenity at its cost.**

**I direct that when clearing snow from the apartment building parking lot the landlord's workmen particularly clear the snow away from the entire portion of the tenant's parking stall and particularly, away from the sides of the tenant's vehicle if it is parked there.**

**I direct that within thirty days the landlord provide the tenant with access to the apartment building game room in some manner compatible with wheelchair use, either a ramp down the stairs or by providing him with a key or other access through the back door that does not require the assistance of a second person, or such other method the parties may agree on.**

As the tenant has been significantly successful on this application I award him recovery of the \$100.00 filing fee and I authorize him to reduce his next rent due by \$100.00 in full satisfaction of that fee.

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: February 21, 2018

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Residential Tenancy Branch