



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNDCT, ERP, RP, OLC, RR

### Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs to the rental unit or to provide services; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and for an Order suspending or setting conditions on the Landlord's right to enter the rental unit.

The female Tenant stated that on November 05, 2018 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of those documents and the evidence was accepted as evidence for these proceedings.

Residential Tenancy Branch records show that on November 05, 2018 the Tenant submitted evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was submitted to the Residential Tenancy Branch on November 25, 2018 and that it was served to the Landlord on November 26, 2018. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

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 there a need to issue an Order requiring the Landlord to provide services or an Order requiring the Landlord to comply with the *Act* or the tenancy agreement?

Is there a need to suspend or set conditions on the Landlord's right to enter the rental unit?

Are the Tenants entitled to a monetary Order for loss of quiet enjoyment of the rental unit and laundry room?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in November of 2017.

The female Tenant stated that she was not able to move into the unit until November 02, 2017 because the Resident Manager wanted to make repairs to the unit, although she does not know what repairs were needed. The Resident Manager stated that two walls in the rental unit were painted on November 01, 2017 and that the painting did not prevent the Tenants from moving into the unit on November 01, 2018.

The female Tenant stated that she feels intimidated by the Resident Manager. When she was asked to explain why she feels intimidated she stated that he called her pushy when they were discussing the delay in moving into the unit. The Resident Manager stated that he does not recall calling the Tenant pushy.

The female Tenant stated that she is seeking an Order requiring the Landlord to provide her with safe access to the laundry facilities. She stated that she does not feel safe using the laundry facilities because the Resident Manager frequently follows her into the facilities; he "leers" at her when she is doing her laundry; and he looks at her laundry. She stated that she has never directly told the Resident Manager that he is bothering her, although on one occasion in October of 2018 she asked him to leave her alone. She stated that in November of 2018 she reported her concerns to the management company, via email.

The Resident Manager stated that the female Tenant has never asked him to stop bothering her or to leave her alone. He stated that he did not know he was disturbing the female Tenant until the Agent for the Landlord informed him of the female Tenant's concerns and that he has done nothing to cause her concern.

The female Tenant stated that the Resident Manager has the ability to use the machines in the laundry room without charge. She stated there are 3 washing machines and 3 dryers in the room. She stated that every day, or every other day, the

Resident Manager uses all of those machines for several hours. The Resident Manager denies this allegation.

The female Tenant stated that on November 20, 2018 she was returning to the residential complex when she observed the Resident Manager using a leaf blower. She stated that she wanted to avoid him she so switched directions with the intent to use a different entry and the Resident Manager began running after her, while still carrying the leaf blower. The Resident Manager stated that he has never run after the Tenant.

The female Tenant stated that the Resident Manager often intercepts mail from Canada Post and delivers it directly to the Tenants. The Resident Manager denies this allegation.

The female Tenant asked the Agent for the Landlord if there were surveillance cameras pointed at her rental unit. The Agent for the Landlord stated that the Landlord posted a notice that there were surveillance cameras in the building in an attempt to prevent vandalism, but there are no surveillance cameras in the building.

The female Tenant stated that she would like an Order requiring the Resident Manager to not enter the laundry facilities when she was using those facilities; to not follow her; to not contact her; and to not deliver mail to her.

The Resident Manager and the Agent for the Landlord both stated that the Resident Manager would avoid the Tenant unless he needs to communicate with her in regards to the tenancy.

The Tenants contend that the Landlord has entered the rental unit without proper notice.

The female Tenant stated that on October 09, 2018 the Landlord placed a notice of entry in their mail box; the Tenants received the notice of entry on October 09, 2018; and the notice of entry indicated the Landlord would be entering the rental unit to make repairs on October 11, 2018 at 9:00 a.m.

The female Tenant stated that on October 16, 2018 the Resident Manager simultaneously knocked on her door and telephoned her, although she did not respond to either contact attempt. She stated that later that day she received a notice of entry that indicated the Landlord would be entering the rental unit on October 19, 2018 at 9:00 a.m.

The female Tenant stated that the Resident Manager left a voice mail in which he indicated that he want to enter the unit to make repairs at 10:30 a.m. on November 01, 2017; that he knocked on the door of the unit at 9:30 a.m. on November 01, 2017, although she did not answer; and that he returned at 10:00 a.m. and waited outside her door for approximately 8 minutes before leaving a note to say that he could not contact them. The Resident Manager does not dispute this allegation and says he was attempting to inform the Tenants the repairs would be made the following day.

The Tenants are seeking an Order preventing the Landlord from entering the rental unit without proper notice. The female Tenant stated that she would also like to change the locks to the rental unit, as that will make her feel safer.

### Analysis

There is a general legal principle that places the burden of proving an allegation on the person who is seeking compensation for damages. In these circumstances the burden of proof rests with the Tenants.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden.

I find that the Tenants have submitted insufficient evidence to establish that the Resident Manager has prevented the female Tenant from using the laundry facilities. While I accept the female Tenant's testimony that she feels uncomfortable using the laundry facilities when the Resident Manager is in the room, I find that she has submitted no evidence to establish that the Resident Manager has acted inappropriately. In reaching this conclusion I was heavily influenced by the absence of evidence that establishes the female Tenant's perception is accurate or that refutes the Resident Manager's testimony that he has done nothing to cause the Tenant concern.

I favour the testimony of the Resident Manager, who stated that he does not use all of the machines in the laundry room on a regular basis, over the testimony of the female Tenant who stated that every day, or every other day, the Resident Manager uses all of the six machines in the room for several hours. In making this determination I was guided by *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May,

2000, in which the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

In regards to using the machines in the laundry room I find that the version of events provided by the female Tenant is highly improbable, as I can find no reason that the Resident Manager would have to use the machines that frequently.

I find that the Tenants have submitted insufficient evidence to establish that the Resident Manager ran after the female Tenant in November of 2018 while he was outside using the leaf blower. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the female Tenant's allegation or that refutes the Resident Manager's denial.

I find that the Tenants have submitted insufficient evidence to establish that the Resident Manager intercepts mail from Canada Post and then personally delivers it to the Tenants. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the female Tenant's allegation or that refutes the Resident Manager's denial.

After considering all of these issues in their entirety, I find that the Tenants have failed to establish that the Resident Manager has acted inappropriately. I therefore find that the Tenants are not entitled to any compensation for loss of quiet enjoyment or loss of use of the laundry facilities. I also find that there is no need to issue an Order requiring the Landlord to provide services or an Order requiring the Landlord to comply with the Act or the tenancy agreement.

In an attempt to provide some stability to the tenancy, the Resident Manager is strongly encouraged to adhere to his commitment to avoid the Tenant unless he needs to communicate with her in regards to the tenancy.

Section 29 of the Act reads:

**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).

I find that the notice of entry that the Tenants received on October 09, 2018 served as proper notice to enter the rental unit on October 11, 2018 at 9:00 p.m., in accordance with section 29(b) of the *Act*.

I find that the notice of entry that the Tenants received on October 16, 2018 served as proper notice to enter the rental unit on October 19, 2018 at 9:00 p.m., in accordance with section 29(b) of the *Act*.

As the Landlord did not enter the rental unit on November 01, 2018, I cannot conclude that the Landlord breached section 29 of the *Act* on that date.

As the Tenants have failed to establish that the rental unit has been entered in a manner that does not comply with section 29 of the *Act*, I find that there is no need to issue an order to suspending or setting conditions on the Landlord's right to enter the rental unit, nor is there a need to grant the Tenants the right to change the locks to the rental unit.

Conclusion

The Tenants' Application for Dispute Resolution is dismissed in its entirety.

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 13, 2018

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Residential Tenancy Branch