



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROYAL MANOR INN  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPT, LA, LRE

### Introduction

On November 27, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking an order of possession of the rental unit and requesting authorization to change the locks and to restrict the Landlords right to enter the rental unit.

The matter was set for a conference call hearing. The Tenant and his advocate appeared at the hearing; however, the Landlord did not.

The Tenant and his advocate provided affirmed testimony that the Landlord was served with the Notice of Dispute Resolution Proceeding documents using registered mail sent to the Landlord on November 7, 2018. The Tenant provided a copy of the registered mail receipt and a photograph of the envelope addressed to the Landlord. The Tenant testified that the registered mail was sent to the address that the Landlord provided for contact during the tenancy.

I find that the Notice of Dispute Resolution Proceeding documents were served to the Landlord in accordance with sections 89 and 90 of the Act. I find that the Landlord is deemed served on the fifth day after it was mailed. The Landlord was served on November 12, 2018.

The Tenant and his advocate provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Procedural and Preliminary Issues

The Tenant amended his application to remove a request for monetary compensation.

### Issue to be Decided

- Does the Tenant have a legal right to possess the rental unit and should the Tenant receive an order of possession?

### Background and Evidence

The Tenant submitted that the tenancy began in July 2018, on a month to month basis. Rent in the amount of \$675.00 is due to be paid to the Landlord on or before the first day of each month. The Tenant rents a room in a rental property with shared use of kitchen and bathroom facilities with other occupants.

The Tenant received a 1 Month Notice To End Tenancy For Cause dated September 28, 2018, and filed to dispute the 1 Month Notice on October 9, 2018. A teleconference hearing was scheduled on November 16, 2018. On November 16, 2018, the Arbitrator found that the Tenant's application was filed one day late and the Landlord was granted an order of possession for the rental unit effective two days after service on the Tenant.

The Tenant made the following submissions:

- On November 19, 2018, the Tenant filed for a review and correction of the Arbitrators Decision.
- On November 21, 2018, the Landlord served the Tenant with the Order of Possession.
- On November 22, 2018, the Tenant, with the assistance of an advocate served the Landlord with a letter informing the Landlord that the Decision and Order of the Arbitrator was under review and could not be executed.
- On November 23, 2018, the Landlord acknowledged receipt of the Tenant's letter. The Landlord offered to move the Tenant to a different building. The Tenant decided he was not willing to relocate.

- On November 26, 2018, the Tenant arrived home to find that the Landlord had moved his belongings to a different building.

On November 27, 2018, the Arbitrator corrected the November 16, 2018, Decision and found that the Tenant had applied to cancel the 1 Month Notice To End Tenancy For Cause in time. The Arbitrator cancelled the 1 Month Notice and ordered that the tenancy will continue in accordance with the Act.

### Tenant's Application

The Tenant is seeking an order of possession and authorization to change the locks and restrict the Landlords right to enter the rental unit.

The Tenant testified that he was living in the rental unit when he returned from work on November 26, 2018, to find a written notice posted to the front door of the rental property informing him that his possessions were moved to another address. The Tenant testified that the Landlord evicted him without authority and without a writ of possession from the court.

The Tenant testified that he never reached an agreement with the Landlord that he would move out of the dispute address.

The Tenant testified that he attended the address provided by the Landlord and the Landlord asked him to sign a tenancy agreement. The Tenant testified that he refused to sign the tenancy agreement for the new location. The Tenant testified that the Landlord will not let him inside of either address. The Tenant testified that he is currently staying in a room at a mission.

The Tenant is seeking authorization to change the locks and to restrict the Landlords access. The Tenant testified that the Landlord has entered his locked room without authorization on two or three occasions. The Tenant testified that he locks his door when he leaves for work and the Landlord has entered his room by unlocking his door and entering without a proper authorization. The Tenant testified that the Landlord has never issued him a notice of entry. The Tenant testified that the Landlord admitted to him that the Landlord entered on one occasion and the Tenant has noticed that his possessions had been moved on other occasions. The Tenant testified that some of his possessions are missing.

The Tenant testified that he spoke to the Landlord about the unauthorized entry into his room and the Landlord ignored him and began to bully him.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant notified that Landlord on November 22, 2018, that Decision and Order of the Arbitrator was under review and could not be executed. I find that the Landlord evicted the Tenant from the rental unit four days later on November 26, 2018.

I find that the Landlord did not have the authority to evict the Tenant from the rental unit on November 26, 2018. There is no evidence before me that the Landlord obtained a writ of possession from the Supreme Court.

I find that the Arbitrator's Decision dated November 16, 2018, was amended on November 27, 2018. The Arbitrator cancelled the 1 Month Notice and ordered that the tenancy will continue in accordance with the Act.

I find that the Tenant has a legal right to possess the rental unit. I grant the Tenant an order of possession effective immediately. The Landlord is ordered to allow the Tenant access to the rental property and is to provide a key to the room.

With respect to the request to authorize the Tenant to change the locks and restrict the Landlord's right of entry; section 29 (1) of the Act provides the following:

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).

Based on the Tenant's testimony, I find that the Landlord has breached section 29(1) of the Act by entering into the Tenants room without getting permission or issuing proper written notice. I find that any decision to permit the Tenant to change the locks and not provide the Landlord with a key is a significant matter with respect to emergency situations related to property and safety.

The Landlord is ordered to comply with section 29(1) of the Act. Any future breach of the Act with respect to the Landlords right to enter the unit may result in the Tenant receiving authorization to change the locks. Any future breach regarding entry may also result in a claim for compensation against the Landlord.

### Conclusion

I find that the Landlord did not have the authority to evict the Tenant from the rental unit on November 26, 2018. There is no evidence before me that the Landlord obtained a writ of possession from the Supreme Court.

I find that the Arbitrator's Decision dated November 16, 2018, was amended on November 27, 2018. The Arbitrator cancelled the 1 Month Notice and ordered that the tenancy will continue in accordance with the Act.

I find that the Tenant has a legal right to possess the rental unit. I grant the Tenant an order of possession effective immediately. The Landlord is ordered to allow the Tenant access to the rental property and is to provide a key to the room.

The Landlord is ordered to comply with section 29(1) of the Act. Any future breach of the Act with respect to the Landlords right to enter the unit may result in the Tenant receiving authorization to change the locks. Any future breach may also result in a claim for compensation against the Landlord.

The Tenant has leave to apply for compensation for any loss as a result of being illegally evicted from the rental unit.

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 20, 2018

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Residential Tenancy Branch