



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LRE, LOA, OLC, PSF, RPT, RR, MNDC, FF

### Introduction

The tenant applies for a variety of relief seeking to limit the landlord's right of entry, permit a lock change, order repairs, order that a service be reinstated or compensation granted, recover the cost of a repair and be awarded a rent reduction.

The landlord argues that she is not a landlord within the jurisdiction of the *Residential Tenancy Act* (the "*Act*") because she is a tenant herself and the Residential Tenancy Branch has told her the *Act* is not applicable.

Of note, the landlord indicated that her name was W.W.L. and not W.L. as stated in the tenant's application. The tenancy agreement confirms this and the style of cause has been amended accordingly.

Both 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.

I refer to the parties as landlord and tenant out of convenience. It is not to indicate any pre-determination of the question.

Issue(s) to be Decided

Is the respondent exempt from the provisions of the *Act*? If not, is the tenant entitled to any of the relief claimed?

Background and Evidence

The rental unit is a three storey house located in a large city. It contains 11 bedrooms, two kitchens and three bathrooms. Four of the bedrooms are on the top floor, four on the main floor and three in the basement. The basement tenants have their own kitchen and bathroom.

The landlord rents the entire house from a corporation under a tenancy agreement that started in December 2017 and is presently for a fixed term to December 2019 at \$3070.00 per month.

In October 2018 the landlord rented a top floor bedroom to this applicant tenant. The parties signed a standard residential tenancy agreement (though the landlord claims the tenant demanded it, not her). The rent is \$1000.00 per month for a fixed term of one year. The tenant paid a \$500.00 security deposit. The tenant's bedroom includes an in-suite bathroom for his exclusive use. He shares kitchen facilities with the top and main floor tenants.

The tenant testifies that at the start of the tenancy he had no key for his rental unit and was required to travel to a nearby city to pick up a new door knob from the landlord. He installed it at no charge.

Within a very short time after he moved in, the landlord closed off the common room on the main floor and rented it out as another bedroom. He thus lost the use of that area as well as having to put up with construction work intruding into the kitchen area for a few days.

The tenancy agreement signed by the parties indicates that the tenant is to have parking for one vehicle. He says that there are three parking spots on the property, all in front of a two-bay garage in the alley. The garage is reserved for the landlord's use

as a storage facility (not as a garage). He says that about a quarter of the time all the spots are taken by others and so he is being denied on-site parking.

The tenant complains that on April 30 someone, not the landlord, burned two mattresses in the backyard and now it is unsightly.

He complains that the landlord has conducted a flooring renovation in the hallway and stairway. It would appear that the landlord has removed the carpeting from those areas and replaced it with a light, vinyl, stick-on material. It was referred to by the tenant during the hearing as “shelving paper.” He said he saw that term on the wrapper for the material.

The tenant also complains about an incident last week, when he says the landlord came up the backstairs and saw him dressing himself through his balcony doors.

The landlord says she occupies and lives in a bedroom on the main floor in the back near the bathroom. She shares that bathroom with other tenants and shares the main floor kitchen with other tenants, including the applicant.

She says that the Residential Tenancy office has told her on more than one occasion that this is a dispute between tenants and so it is not covered by the *Act*.

The landlord admits to closing off the common room and renting it out but says this tenant never lost use of the kitchen.

She states that the tenancy agreement was presented to her by the tenant and that she was “forced” to sign it. She says that there is a lot of free parking on the streets adjacent to this home.

She denies ever entering the tenant’s place without permission. On the one occasion she showed up with a heating technician, only the technician went into the tenant’s room and it was with the tenant’s implied consent.

## Analysis

Is the Respondent a Landlord?

The *Act* defines a “landlord” as:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who**
  - (i) is entitled to possession of the rental unit, and**
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;**
- (d) a former landlord, when the context requires this;

*(emphasis added)*

Under this definition, if a tenant occupying a “rental unit” brings in others to share the accommodation, that tenant is not the landlord of the others and is not subject to the rights and obligations of a landlord under the *Act*.

While there has been some debate amongst arbitrators about whether the word “occupy” means to reside at a place or merely to legally possess it, that question has been resolved by Residential Tenancy Guideline 2A, “Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member.” “Occupy” means to use the rental unit as living accommodation or as part of one’s living space.

Guideline 2A deals with the word “occupy” as it is contained in s. 49 of the *Act* and not specifically as it is contained in the definition of “landlord” noted above. However, “[g]iving the same words the same meaning throughout a statute is a basic principle of statutory interpretation.” (Sopinka, J., *R. v. Zeolkowski*, (1989), 61 D.L.R. (4<sup>th</sup>) 725, at 732 (S.C.C.)). Accordingly, the word “occupy” in the definition of “landlord” in the *Act* has the same meaning as the word “occupy” in s. 49 of the *Act* and as explained in the Guideline.

It follows that for a tenant who rents out a portion of the house she rents from her landlord, to avoid the application of the *Act* she must show that she resides at the house; that she uses the rental unit as living accommodation.

The evidence satisfies me that the landlord does not reside at this house. The tenant states she does not occupy any of the main floor bedrooms. It would seem an unusual thing for the tenant to lie about if the landlord was, in fact, living there with him and nine or ten other tenants. More determinative are the long list of text messages between the parties, with the landlord informing the tenant when she would be coming by the property, the tenant having to travel to another city to collect the door knob from the landlord, the landlord being unaware of such things as the big fire in the backyard, the tenant having to cajole the landlord into coming by the property and picking up her registered mail and the landlord having to make a time with the tenant when she could come by the house to deliver her evidence on him.

I find that the landlord is a landlord within the meaning of the *Act*. She is subject to the rights and obligations imposed by the *Act* and by the standard terms of every tenancy agreement. She is subject to this dispute resolution proceeding.

## Tenant's Claims

### Common Room and Kitchen

It is apparent that shortly after he moved in the tenant lost the use of a common room adjoining the main floor kitchen. This was a loss of a facility. A landlord may only remove a non-vital service or facility by giving notice and paying the value of the service or facility as directed by s. 27 of the *Act*.

In this case I am satisfied that the tenant lost about one-third of the area of his living accommodation. He requests a one third reduction in his rent but in my view that is too

much because the lost area is an area shared with many others. In all the circumstances I award the tenant \$150.00 per month for the loss of the common area, from November 2018 to and including July 2019 and I direct that his rent be reduced by \$150.00 per month starting August 1, 2019.

#### Kitchen Interruption

The scant evidence on this aspect of the tenant's claim does not show that the disturbance to the usability of the kitchen during the closing off of the common room was anything but a minor inconvenience, not justifying any compensation.

#### Door Handle Install

The tenant travelled to the landlord's home in another city, retrieved the door knob for his door and installed it with a screwdriver he said he had to purchase for about \$10.00. I find that the tenant offered to perform this service at no cost. He cannot change his mind later simply because he fell into a dispute with the landlord. I dismiss this item.

#### Off Street Parking

The landlord's statement that she was "forced" into signing the tenant agreement does not persuade me that she signed the agreement against her will and that it should be void. Lacking is any indication of threat to her liberty, threat of violence or economic pressure or other indicia of compulsion. Under the contract the tenant is entitled to a parking space. That cannot be anything but a parking space on the property because that is the only kind of parking space the landlord can give.

The tenant noted that he was without an on-site place to park about 25% of the time but did not indicate whether he suffered any particular damage or loss as a result, but perhaps for a slightly longer walk. I therefore deny the tenant any damages, to date, as a result of the landlord's breach of the tenancy agreement.

**I order and direct that the landlord assign and label one of the three parking spots in front of the garage and a spot reserved for this tenant and the tenant be authorized as far as necessary by the landlord to enforce his right to the use of such a spot but having any infringing vehicle towed.**

### Backyard Fire

I dismiss the monetary aspect of the tenant's claim under this item. The landlord is not responsible for the fire, obviously. It was set by others. Her responsibility is to maintain the common area in a reasonable state. The fire resulted in an area of lawn approximately two meters by two meters being scorched to blackness in a yard that does not appear to receive much upkeep. There is insufficient evidence to establish that this damage caused the tenant any loss; either of use or of amenity in what appears to be generally unmaintained backyard..

**In my view the landlord should apply lawn seed and water to promote the re-greening of this area and I direct that she do so.**

### Flooring

The tenant's photographs establish that the landlord has applied some type of paper or light vinyl covering with a wood pattern to the hallways and stairs on the main and upper floor. The landlord did not dispute the tenant's evidence that carpet tacks or nails are still protruding out of the floor.

I am satisfied that the covering is an inappropriate covering for interior floors. It is in the nature of stick-on covering for shelving. **I direct that within the next thirty days from the date of this decision the landlord retain a qualified person and have installed on the hallway floors and stairs of this house a floor covering designed for that purpose.**

The tenant has not suffered any particular damage as the result of the floor covering. It is not possible to determine that this covering was of a lesser amenity than the old covering, and so I grant no award in that regard.

### Entry

Authorizing a change of locks is not necessary in this case. Rather, **I direct that the landlord her workmen or agents may not, but for the case of an emergency, enter the tenant's room without his consent without first giving the notice required under s. 29 of the Act.**

### Front Door

The front door latch does not work, though the dead bolt works to keep the door closed and locked. I find this to be a very minor item because each tenant must use the deadbolt when entering and leaving. Nevertheless, it is an item requiring repair. **I direct that within the next ninety days the landlord retain the services of a qualified repairmen to fixed the latch on the front door.**

### Conclusion

The tenant is entitled to a monetary award of \$1350.00 for the loss of use of the common room for the nine months December 2018 to July 2019 inclusive. I also award the tenant recovery of the filing fee of \$100.00. The tenant will have a monetary order against the landlord in the amount of \$1450.00, which he may set off against future rent as it comes due.

I direct that the tenant's rent be reduced by \$150.00 commencing August 1, 2019.

I order and direct the landlord to act as set out above in the bold highlighted portions of this decision.

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: July 15, 2019

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Residential Tenancy Branch