



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OTC, FFL

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An application to order the tenant to comply with the tenancy agreement and *Act* pursuant to section 62(3);
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended with his lawyer DS (“the landlord”). The tenant attended, and the witness DT was called on her behalf. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. No issues of service were raised. I find the landlord served the tenant in accordance with section 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to the following:

- An application to order the tenant to comply with the tenancy agreement and *Act* pursuant to section 6(2) and 58(1);
- Authorization to recover the filing fee for this application pursuant to section 72.

### Background and Evidence

Each party submitted substantial evidence. During the hearing, I warned the tenant multiple times about interrupting and yelling. I repeatedly told the tenant to allow the landlord to give uninterrupted testimony and answers to my questions as well as to let me finish my sentences. The tenant told me several times that it was clear I favoured the landlord, I had already made my decision, she was not getting the chance to talk, and I was not listening to anything she said. I provided the tenant unlimited time to provide testimony. The hearing lasted 2.25 hours.

## Analysis

The parties agreed they entered into a tenancy which started on March 15, 2012. Rent of \$740.00 a month is payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$350.00 which the landlord holds. The tenancy is ongoing. The parties provided details of a previous arbitration referenced on the front page of this decision. A copy of the tenancy agreement was submitted as evidence.

The landlord testified that the rental unit consisted of a suite located in a single-family residence. The landlord testified that there are two other rental units in the building.

The landlord's application concerned two issues:

1. Utility room – access by the landlord
2. Trailer owned by tenant – removal requested by landlord

### *Utility room – access by the landlord*

During the hearing, the parties resolved this issue and agreed as follows:

1. Within two weeks, the landlord will replace the exterior door of the utility room with a new good quality exterior door and lock to which each of the tenant and the landlord shall have a key; and
2. The landlord may have reasonable access to the utility room without notice to the tenant for reasonable maintenance purposes.

### *Trailer*

The landlord requested an order compelling the tenant to remove a trailer which she placed on the grass in the yard in front of the building in July 2018.

The tenant estimated the trailer is 15' long; she testified it is of the type intended to be carried from place to place in the box of a truck. It does not have wheels and rests on wooden pallets. The tenant stated she used the trailer for storage. Pictures were submitted as evidence.

The landlord testified he did not give the tenant permission to park the trailer on the property. The landlord submitted a copy of a text dated July 25, 2018 from the landlord to the tenant, shortly after she moved the trailer onto the property, in which he stated that she did not ask for permission.

The landlord submitted as evidence a letter dated October 10, 2018 from him to the tenant demanding that she remove her trailer.

The landlord testified that the trailer is unsightly, old and a nuisance; it is "larger than a minivan" and blocks light entering the front of the building, creates challenges for

access to the front of the structure and the roof for maintenance, and is a possible safety issue in terms of access to the building for fire protection. The landlord requested an order compelling the tenant to remove the trailer.

The tenant vehemently denied the landlord's claim and his evidence. The tenant stated as follows:

- The landlord orally approved her request to move the trailer to its current location in front of the building in July 2018;
- Even if he did not provide permission or changed his mind, it was her right as a tenant to access the front yard of the building as it was a common area for the use of all tenants, including the permanent placement of her trailer;
- Two weeks prior to the hearing, the landlord told the tenant that he would be satisfied if the tenant put the trailer on a truck and left it parked in the driveway; the tenant acknowledged she does not own a truck;
- The trailer was necessary for storage because the landlord provided inadequate storage for her possessions although she acknowledged access to a storage shed on the property and the use of the utility room for storage;
- The landlord has ulterior motives in wanting to get her out of the unit so he can "renovict" and get higher rent;
- The landlord's lawyer (present at the hearing) was the driving force behind this application as he wanted to make money.

The tenant called as a witness her friend DT who testified he had a separate discussion with the landlord at which the tenant was not present; in this exchange, the landlord agreed the tenant could put the trailer on a truck.

In response, the landlord testified that he objected to the presence of the trailer from the first day he discovered the tenant placed it at the front of the building without his permission; he stated he never agreed the trailer could be placed there or that the situation could be resolved by the tenant putting the trailer on the box of a truck and parking the truck in the driveway. The landlord submitted written communication with the tenant as evidence that he repeatedly and consistently asked her to move the trailer and that he warned her that he would apply for appropriate orders if she did not do so.

### Analysis

While I have turned my mind to the evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

The relevant sections of the Act are set out below.

Section 6(2) of the Act provides as follows:

**6** (1) *The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.*

(2) *A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes].*

Section 58(1) of the Act provides as follows, [emphasis added]:

(1) *Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:*

(a) *rights, obligations and prohibitions under this Act;*

(b) *rights and obligations under the terms of a tenancy agreement that*

(i) *are required or prohibited under this Act, or*

(ii) *relate to*

(A) **the tenant's use, occupation or maintenance of the rental unit, or**

(B) **the use of common areas or services or facilities.**

Section 62(3) of the Act provides as follows:

(3) *The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order **that a landlord or tenant comply with this Act, the regulations or a tenancy agreement** and an order that this Act applies.*

The Act defines a "**rental unit**" as the living accommodation rented or intended to be rented to a tenant.

On the other hand, the Act defines a "**common area**" as any part of residential property the use of which is shared by tenants, or by a landlord and one or more tenants.

Based on the evidence of the parties, I find that the front yard of the property where the trailer is located is a common area since it is shared among all tenants.

In this matter, the tenancy agreement is silent regarding the use of the common area.

However, s. 28 of the Act states as follows:

*...tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: ...*

*(d) use of common areas for reasonable and lawful purposes, free from significant interference.*

Based on the evidence of the parties regarding use of the front yard, I find that there is an implied term in the tenancy agreement that all tenants may use the common areas of the property, including the front yard, for reasonable and lawful purposes, free from significant interference.

However, since the common area is shared, I also find that there is an implied term in the tenancy agreement that the tenant shall not **exclusively** possess the common area in a way that prevents the other tenants or the landlord from using it.

Based on the evidence of the parties, I find that the trailer is not moveable as it has no wheels, is not self-propelled, and rests permanently in the front yard. This amounts to an **exclusive** possession by the tenant of a portion of the front yard. I find this is not **shared** use of a common area but instead is a unilateral appropriation of the front yard by the tenant without the landlord's permission.

I have considered the tenant's evidence that the landlord consented to the placement of the trailer in the front yard and that he also agreed she could put it on a truck and park it in the driveway.

I prefer the landlord's evidence that he objected to the placement of the trailer as soon as he knew the tenant put it in the front yard and that he consistently objected ever since. The landlord's evidence is credible as it is supported by copies of correspondence between the parties. I find the landlord consistently objected to the placement of the trailer by the tenant in the front yard.

I find the tenant has unlawfully taken over or appropriated the common area of the front yard to her exclusive use and has no intention of allowing any other tenant or the landlord to use the space occupied by the trailer. I find the tenant is in breach of the implied term of the tenancy agreement that common areas may be used by all tenants and the landlord.

I therefore find that the landlord has met the burden of proof on a balance of probabilities that the tenant is in breach of her tenancy agreement in storing the trailer in a common area, being the front yard of the building, and the landlord is entitled to an order compelling the tenant to remove it.

I therefore grant the landlord an order pursuant to section 62(3) requiring the tenant to remove the trailer from the common areas of the building in which the unit is located on or before 1:00 PM on July 31, 2019.

As the landlord has been successful in this application, I grant the landlord a monetary order for \$100.00 for reimbursement of the filing fee.

### Conclusion

Pursuant to the agreement between the parties I order as follows:

1. Within two weeks, the landlord will replace the exterior door of the utility room with a new good quality exterior door and lock to which each of the tenant and the landlord shall have a key; and
2. The landlord may have reasonable access to the utility room without notice to the tenant for reasonable maintenance purposes.

I therefore grant the landlord an order pursuant to section 62(3) requiring the tenant to remove the trailer from the common areas of the building in which the unit is located on or before 1:00 PM on July 31, 2019.

The landlord is entitled to a monetary order in the amount of **\$100.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) to be enforced as an Order of that Court.

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 05, 2019

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Residential Tenancy Branch