



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, OLC, RP

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord acknowledged receipt of evidence submitted by the tenants, however, the landlord did not submit any documentation for this hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

Are the tenants entitled to an order compelling the landlord to conduct repairs to the unit/suite as required?

Are the tenants entitled to an order compelling the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to the recovery of the filing fee from the landlord for this application?

### Background and Evidence

The tenant gave the following testimony. The tenant testified that she moved into this unit on August 14, 2019 as a result of being granted an order of possession from the Branch. The tenant testified that as part of their rental agreement they were promised unlimited access and use to a large patio along with the balcony situated on their unit. The tenant testified that the day after receiving keys to the unit, the landlord erected plywood walls to obstruct access along with an enclosure to keep the tenants from using the patio.

The tenant testified that this patio is for their use and that the landlord is unjustly restricting access. The tenant testified that it was promised by one of the marketing representatives and was a major factor in the choice of unit. The tenant requests; that the landlord remove the plywood walls, remove the enclosure, clean the entire patio, repair or replace any paver stones that are damaged and to allow the tenants unlimited and full access to the patio.

The landlord's agents gave the following testimony. CS testified that the patio was never designated to this unit. CS testified that the developer has not yet decided what to do with it. CS testified that the tenants have a 500 square foot balcony that is part of their suite and is for their full and private use. CS testified that the patio area in question; is a limited common area for which use has yet to be determined. CS testified that plywood walls were put up to prevent all tenants to access this area, not just the subject tenants.

CS testified that it was done in a hurried fashion as the tenants were granted possession of the unit sooner than anticipated. CS testified that the drawing the tenant is relying on as part of her documentation did not come from their company or marketing team and is unsure as to where she got them. RM testified that he requested that the tenant provide documentation to support her allegation that the patio was to be for her use but has yet to see any. CS testified that the tenancy agreement does not include access to the patio.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out below.

The tenants are relying on floor plan from the marketing department of the developer. However, on that same document there is a notation from the developer that states:

*“The developer reserves the right to make changes and modifications to the information contained herein. Floor plans, layouts, and finishes are subject to change without notice.”*

In addition, the tenants did not provide sufficient documentation in either their tenancy agreement or other documentation to show that they were entitled to have unlimited access to this patio. The tenants are relying on general marketing flyers and drawings rather than specific documents and terms related to their specific unit. Based on the insufficient, general, and somewhat vague evidence submitted by the tenants, I hereby dismiss this application in its entirety without leave to reapply.

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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: November 04, 2019

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Residential Tenancy Branch