



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPT

### Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by the tenant seeking remedy under the *Residential Tenancy Act* (the Act). The tenant applied for an order of possession under the Act due to the landlord unlawfully changing the locks to the rental unit.

The tenant and the spouse of the tenant JV (spouse) attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated December 5, 2019 0 (Notice of Hearing), the application and documentary evidence were considered. The tenant and spouse provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the landlord by personal service at the landlord's home address in Surrey on December 5, 2019 at approximately 8:00 p.m. The spouse and the tenant stated that they attended the landlord's residence together and that the spouse rang the doorbell of the landlord and their spouse answered and eventually the landlord came to the door. According to the spouse, although the landlord did not take the package from the spouse containing the application, Notice of Hearing and documentary evidence, the spouse advised what was in the package and placed the package inside of the entryway on the floor before the landlord closed the door.

As a result, of the above, I accept the testimony of the tenant and spouse and find that the landlord was sufficiently served in accordance with the Act with personal service on December 5, 2019. I have also considered the Proof of Service document submitted in evidence by the tenant.

As the landlord did not attend the hearing, I find this matter to be unopposed by the landlord. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters

The tenant confirmed their email address at the outset of the hearing and stated that they understood that the decision will be sent by email. Any resulting orders will be sent to the appropriate party for service on the other party. The decision will be sent by regular mail to the landlord as the tenant did not have an email address for the landlord.

The tenant's filing fee was waived and as a result, I will not deal with a filing fee in this matter.

### Issue to be Decided

- Is the tenant entitled to an order of possession for the rental unit under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on July 1, 2018.

The tenant testified that her parents brought their trailer into the driveway in August 2019 and have been occupants in the rental unit and that on November 2, 2019, the landlord changed the locks to the rental unit and stated that the landlord will be renting to her parents instead. The tenant testified that they paid rent for both November and December of 2019 and that her parents are not tenants, they are occupants/guests of the tenant. The tenant also confirmed that her brother is an occupant/guest and that the landlord has illegally changed that locks and did not end the tenancy in a method approved under the Act.

The tenant is seeking an order of possession. The tenant stated that her parents were coming inside the rental unit to provide tips on how to better parent the tenant's children; however, the landlord violated the Act by changing the locks and giving access to the tenant's parents instead of the tenant.

### Analysis

Based on the undisputed testimony of the tenant and the undisputed documentary evidence before me, and on the balance of probabilities, I find the following.

I accept that the tenant has paid rent for November and December of 2019 based on the undisputed testimony before me and that there is no evidence before me to support that the landlord has entered into a new tenancy agreement yet with the parents of the tenant. Section 44 of the Act applies and states:

### **How a tenancy ends**

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
    - (i) section 45 *[tenant's notice]*;
    - (i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;
    - (ii) section 46 *[landlord's notice: non-payment of rent]*;
    - (iii) section 47 *[landlord's notice: cause]*;
    - (iv) section 48 *[landlord's notice: end of employment]*;
    - (v) section 49 *[landlord's notice: landlord's use of property]*;
    - (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
    - (vii) section 50 *[tenant may end tenancy early]*;
  - (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section

97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

I have no evidence before me that the landlord ended the tenancy according to section 44 above and therefore I find the landlord has breached section 44 of the Act. As a result of the above, I find that section 54 of the Act applies, which states:

### **Order of possession for the tenant**

**54**(1) A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.

(2) The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

(3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

Based on the above, and considering that I have no evidence before me that new tenants have paid rent for November or December of 2019, I grant the tenant an order of possession for the rental unit, **effective two (2) days** after service on the landlord.

Based on the undisputed evidence before me, I find the occupants in the rental unit have no rights under the Act and that a tenancy has not been formed as a result, and that the tenancy was not ended by the landlord in a method approved under the Act.

Section 31(1) of the Act also applies and states:

**Prohibitions on changes to locks and other access**

**31(1)** A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

Based on evidence before me, I find the landlord breached section 31(1) of the Act by changing the locks to the rental unit without authority to do so.

Conclusion

The tenant's application is fully successful.

The tenant has been granted an order of possession effective two (2) days after service on the landlord. The landlord must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The tenancy shall continue until ended in accordance with the Act.

I caution the landlord not to breach sections 31(1) and 44 of the Act in the future. Failure to comply with the Act could lead to a recommendation for an administrative penalty under the Act.

The maximum penalty for an administrative penalty under section 94.2 of the Act is \$5,000.00 per day and may be imposed for each day the contravention or failure continues.

This decision will be emailed to the tenant and sent by regular mail to the landlord as the tenant did not have an email address for the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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, 2019

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Residential Tenancy Branch