



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      OLC

### 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.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The tenant's application identified two different landlord names. At the outset of the hearing, counsel for the landlord advised that the first name listed in the application is the correct landlord. The tenant did not object. The tenant's application has been amended to reflect the correct landlord name.

### Issues

Should the landlord be issued an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

### Background and Evidence

The rental unit is a ground floor apartment unit. The tenancy began December 1, 2007.

The tenant is requesting the landlord abide by the Act in addressing her concerns with her next-door neighbor. The tenant submits that she is a 70-year-old physically disabled woman. The tenant submits that on September 6, 2019 she was physically assaulted by her neighboring tenant K.P. The tenant submits that in the past she has asked K.P. numerous times to move her flower basket back on to her side. On this day she took the basket down to put it back on K.P.'s side but in the process the plastic

hanger broke and the basket dropped. She tried apologizing for accidentally dropping the basket but K.P. came out screaming at her. K.P. subsequently kicked over a plywood panel that was used as a divider to separate the patios of the units. She stood the panel back up at K.P. knocked it down again. She stood the panel back up again and this time K.P. kicked the panel over right on top of her. She suffered bruising and nearly broke her hip when falling on the ground. The tenant submits she wrote to the landlord twice in regard to the incident, but no action has been taken by the landlord. The tenant submits there were witnesses present during the incident, but the landlord did not question any of the witnesses.

Counsel for the landlord submits that the tenant has not presented any evidence that the landlord is not complying with the Act. Counsel submits that the landlord investigated the incident and heard two different stories from the two tenants involved. Counsel submits the issue of the assault should be a matter for the RCMP to investigate or dealt with through a civil lawsuit. Counsel submits that there is simply not enough evidence for the landlord to evict K.P. as requested by the tenant.

On behalf the landlord, the Director J.S. testified that the incident was investigated but it turned into a “he said, she said” and they could not base any evictions on that. J.S. testified that the landlord did try to arrange a meeting between the two tenants to resolve any issues, but the tenant refused. J.S. testified that the tenant K.P. stated that the tenant purposely broke her hanging basket. K.P. also stated that the plywood divider fell over accidentally as she was picking up her basket and she did not even know that the tenant was on the other side. J.S. explained that the plywood divider had been installed by the tenant and was not secured properly. J.S. testified that the tenant had previously written to the landlord requesting K.P. be evicted for allowing her strawberry plants to grow across a pathway causing a tripping hazard. J.S. testified the tenant reported the matter to WorksafeBC and the plants were subsequently removed. J.S. testified that they were unaware of any witnesses to the incident.

### Analysis

Pursuant to section 62(3) of the Act, the director may order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement.

I find the tenant has submitted insufficient evidence that the landlord is not complying with the Act, the regulation or the tenancy agreement. I find the incident of September 6, 2019 was a dispute between neighboring tenants and there is insufficient evidence provided as to who instigated this incident or whether there was any assault. The tenant submits that she “accidentally” dropped the neighbor’s hanging basket and the neighbor stated to the landlord that she also “accidentally” dropped the plywood

divider. There were no witnesses or witness statements presented as evidence for this hearing. As the applicant, the onus was on the tenant to provide such. I find the landlord took appropriate steps to investigate the incident although for future I recommend the landlord investigate any potential witnesses to conduct a more thorough investigation.

### Conclusion

The tenant's application is dismissed 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: January 03, 2020

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Residential Tenancy Branch