



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LRE, LAT, FFT

### Introduction

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

- an order to restrict or suspend the landlord's right of entry, pursuant to section 70;
- an order for the tenant to change the lock, pursuant to section 31; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88, 89 of the *Act*.

### Issues to be Decided

Is the tenant entitled to:

1. an order to restrict or suspend the landlord's right of entry?
2. an order to allow the tenant to change the lock?
3. recover the filing fee for this application?

### Background and Evidence

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

Both parties agreed the tenancy started on September 03, 2019. Monthly rent is \$600.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$300.00 was collected. The landlord still holds it in trust. The tenancy agreement was submitted into evidence. The rental unit is an independent suite attached to the landlord's house.

The tenant e-mailed the landlord on October 20, 2019 asking the landlord not to enter the rental unit without proper notice:

In addition, I ask that no one enters the suite with less than 24 hours notice, or unless someone answers the door, for any reason that is not an emergency as the tenancy agreement and law states.

The landlord replied the next day:

Thanks! Do not worry, is our expectation that nobody violated yours or of the other girls privacy, unless emergency. We usually let everybody know ahead of time if possible, when we need to enter any private room.

The landlord affirmed she enters the rental unit without notice to deliver the mail and food to the tenants. The landlord knocks on the rental unit's door and if nobody answers she enters it because she assumes the tenants are not there. The landlord does not enter the tenants' bedrooms.

On March 30, 2020 the tenant asked the landlord not to bring potential new tenants for viewings because of the pandemic:

I should also say however that it is not advise to have strangers coming to the house with the pandemic going on because they may have the virus and bring it into the house, which then puts me out of work and closes down the work place I work at. I could host skype call tours in the evening if someone is interested and you're comfortable but it's very uncomfortable that strangers come into the house right now.

The landlord replied the next day affirming:

As for the prospective tenants that may come to see the vacancy, be assured that they do not come for any “quiet enjoyment” and will not spend any “time over” more than just a few minutes see the facility. In addition, we have some conditions in place besides distancing, to wear some form of protection mask (SIC), and do not touch anything in the house, but only see around what they are interested for.

The tenant replied submitting a link for the Residential Tenancy Branch guidelines about viewings during the pandemic and stating:

I am not giving my consent to showings happening in person during the current health crisis and I would hope no one is willing to come and look, but in case they are, the following information applies.

Should you not be willing to comply with this law until the health crisis is over I will file an official dispute with the BC tenancy branch.

The landlord affirmed she is thankful for the tenant’s offer to host virtual showings, but potential tenants prefer in person showings.

Both parties agreed on May 05 the landlord conducted a viewing without giving notice. In answering to the tenant’s email asking why no notice was given and strangers entered the rental unit, the landlord affirmed:

Although the prospective tenants usually are not well known to us, they are not “complete strangers” since we have information in writing, through recommendation or through interview prior to showings.

It is not like somebody totally unknown shows up at the door and we invite them in.

An informative notice I’ve sent you at the end of March when the room became available, that we are open for application and showings.

Sometimes is not possible another “proper notice” as things may come up in short time, so please be aware of it.

However, as soon as I knew, I came in before the showing and I told you while you were near the stove that we will have a showing.

Hope it clarifies your question.

The landlord affirmed when one of the bedrooms is available the landlord can always conduct viewings and the current tenants can not oppose to this. The landlord affirmed it is important for her to re-rent the available bedroom as soon as possible.

The tenant affirmed a lock needs to be installed in the door that separates the landlord’s house and the rental unit and the locks of the rental unit’s front door need to be

changed. The landlord affirmed the door that separates the landlord's house and the rental unit has a lock.

### Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 29 of the Act states:

70 (1)The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29

[...]

29 (1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i)the purpose for entering, which must be reasonable;

(ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c)the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d)the landlord has an order of the director authorizing the entry;

(e)the tenant has abandoned the rental unit;

(f)an emergency exists and the entry is necessary to protect life or property.

(2)A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The landlord acknowledged entering the unit on May 05 without giving notice to the tenant thus failed to comply with section 29(1)(b).

Due to the government's declaration of a state of emergency due to Covid19 pandemic, the government has issued an order further restricting a landlord's access to a rental unit; the landlord is not permitted to conduct viewings. Ministerial Order M089, issued on March 30, 2020, states:

Landlord's right to enter rental unit – Residential Tenancy Act

8 (1) Despite section 29 (1) (b) of the Residential Tenancy Act and sections 11 (2) (a) and (3) of the Schedule to the Residential Tenancy Regulation, **a landlord must not enter a rental unit that is subject to a tenancy agreement even if the landlord gave the tenant written notice in accordance with those sections that the landlord would be entering the rental unit.**

(2) If a landlord gave written notice under section 29 (1) (b) of the Residential Tenancy Act before the date of this order, and the date for entering the rental unit given in the notice increase is after the date of this order, that notice is null and void.

(3) Despite any section of the Residential Tenancy Act, the Residential Tenancy Regulation or any term of a tenancy agreement that limits entry by a landlord into a rental unit that is subject to a tenancy agreement, a landlord may enter a rental unit that is subject to a tenancy agreement if the following applies:

- (a) an emergency in relation to the COVID-19 pandemic exists, and
- (b) the entry is necessary to protect the health, safety or welfare of the landlord, a tenant, an occupant, a guest or the public.

The measures adopted by the landlord to conduct the viewings do not authorize her to act contrary to the Act and Ministerial Order M089.

I order the landlord shall not enter the rental unit, except as provided for in section (3) of Ministerial Order M089.

The tenant also applied for an authorization for a lock change. Section 31(3) of the Act states:

(3)A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

Based on the landlord's testimony, I find the landlord did not know she had no right to conduct viewings pursuant to Ministerial Order M089. As the landlord is expected to

comply with my order for her to comply with Ministerial Order M089, I do not authorize the tenant to change the lock on the rental unit.

I warn the landlord if she fails to strictly abide by the Act, Ministerial Order M089 and the terms of this decision, the tenant may file a further application with the Residential Tenancy Branch for appropriate relief, including an authorization to change the lock at the expense of the landlord and a monetary compensation.

As the tenant is successful with her application, pursuant to section 72 of the Act, I authorize her to recover the \$100.00 filing fee. I order that this amount may be deducted from the rent payment due on July 01, 2020.

### Conclusion

The landlord is ordered:

- (1) to not enter the rental unit except as provided for in Ministerial Order M089;
- (2) to comply with section 29 of the Act after the state of emergency expires.

Pursuant to section 72(2)(a) the tenant is authorized to deduct \$100.00 from a future rent payment to recover her filing fee.

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: June 11, 2020

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Residential Tenancy Branch