



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPT, FF

### **Introduction**

This hearing dealt with an application by the tenant for an order of possession of the rental unit and for the recovery of the filing fee.

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

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issue to be Decided**

Is the tenant entitled to an order of possession? Did the landlord lock the tenant out of the rental property?

### **Background and Evidence**

The tenancy started on February 12, 2017. A copy of the tenancy agreement was filed into evidence. The rental unit is house that contains a self-contained suite which is rented out separately. The rent for the entire home is \$2,600.00 payable on the first of each month. The landlord agreed that the tenant rented the entire home and had his permission to rent the self-contained suite to a third party.

The tenant stated that since the start of tenancy he paid rent regularly and on time but since the onset of the pandemic, he started falling behind and made partial rent payments. The tenant stated that he paid \$1,000.00 for each of the months of May, June and July.

The landlord agreed that he had received rent in these amounts but added that the rent was from the occupant of the suite and that the tenant did not pay his own share of rent.

The landlord stated that the tenant had moved out without informing him and after receiving partial rent for three months, the landlord visited the rental unit. The landlord stated that the rental unit appeared to be vacant and therefore he assumed that the tenant had moved out and had abandoned the unit.

Based on his determination that the tenant had abandoned the unit, the landlord changed the locks on July 06, 2020. When the tenant found himself locked out of the rental unit, he made this application on July 08, 2020. The tenant maintained that he had not moved out of the rental unit and even informed the landlord that the address of the rental unit was his mailing address for future service of documents.

The tenant has applied for an order of possession.

### **Analysis**

At common law, the tenant has a right to quiet enjoyment and peaceful occupation of the premises. Section 31 of the *Residential Tenancy Act* addresses changes to locks and other access.

### **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.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

- (a)the tenant agrees to the change, and
- (b)the landlord provides the tenant with new keys or other means of access to the rental unit.

The landlord agreed that he had changed the locks and had not provided the tenant with a key. By doing so the landlord locked the tenant out. Even though the tenant fell behind on rent payments, he still made partial payments for the last three months including this month. The landlord accepted these rental payments and therefore the landlord was mistaken in assuming that the tenant had abandoned the rental unit.

Based on the above, I find that by locking the tenant out, the landlord breached the tenancy agreement and therefore must allow the tenant access to the rental unit. I find that the tenant is entitled to an order of possession. Since the tenant has proven his case, I grant him the recovery of the filing fee of \$100.00.

The tenant may make a one-time deduction of \$100.00 from a future rent.

**Conclusion**

I grant the tenant an order of possession effective immediately and a one-time deduction of \$100.00 from a future rent.

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 21, 2020

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Residential Tenancy Branch