



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LAT, LRE, OLC

### Introduction

The tenant applies for an order permitting him to change the locks to the premises, an order limiting the landlord's right of entry and an order that the landlord comply with the tenancy agreement or the *Residential Tenancy Act* (the "RTA").

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only evidence that had been traded between the parties was accepted during the hearing.

### Issue(s) to be Decided

Does the evidence show the landlord has given good cause to have his right of entry restricted or to be ordered to comply with the *RTA* or the tenancy agreement?

### Background and Evidence

The rental unit is a two bedroom condominium apartment. The landlord, with others, rented the condo in October 2018 but the landlord's co-tenants ceased use of the condo and the landlord has been subletting all or portions of it.

This tenant found the rental unit on Facebook in May 2020, offered as "short term" rental accommodation. Neither party submitted a copy of the Facebook ad. It was the tenant's understanding that the landlord was the owner. The parties reached an agreement for the tenant to move in May 1. The monthly rent was agreed to be \$850.00. The tenant paid a \$425.00 security deposit.

The parties did not sign a written tenancy agreement. They both agree that the arrangement was for a fixed term to September 30, 2020 and that the tenant would move out by that date.

The tenant thought he was renting the entire apartment but for one of the two bedrooms which the landlord would retained for storage of his personal belongings.

When he arrived to move in he found Mr. DW living there, occupying an area known as the “solarium.” The solarium is a room off the kitchen with one solid wall and three walls of glass, one to the outside and one glass wall with a sliding door to the kitchen. The tenant indicates it is a dining room and is not a bedroom.

Apparently, Mr. DW was to have moved out by the time this tenant arrived. However, he continued to live there for about another 20 days.

Since Mr. DW left the tenant has been the sole occupant. However, he complains that the landlord enters without permission or notice to show the apartment to prospective tenants. The landlord has run ads to rent the second bedroom and the solarium as “private rooms.”

It is the landlord’s opinion that the apartment is shared accommodation and that he is free to enter as he pleases and to rent out the other rooms.

### Analysis

The landlord has put himself in a difficult position by failing in his statutory obligation to prepare a written tenancy agreement. Such an agreement would have, or should have, specified exactly what the arrangement was regarding use of the premises; over what portions the tenant had exclusive possession and what portions he was required to share with others.

Mr. DW testified saying that the tenant was surprised to find him there when he moved in and that the landlord was not living there for the months Mr. DW occupied the apartment.

On the testimony and evidence presented at this hearing, I find that it was represented to the tenant either expressly or by implication that he would be renting the entire apartment until September 30, 2020, but for a bedroom which the landlord reserved to himself for personal storage.

I find that the tenant has exclusive possession of the rental unit, but for the second bedroom reserved for the landlord’s storage and that the landlord is not a liberty to

reside in the apartment himself nor to advertise for or authorize any other person to occupy any portion of the rental unit without the tenant's express consent.

The landlord has a right to enter the premises but only with the tenant's consent or on notice as provided in the *RTA*, but not otherwise. This includes entry to gain access to the bedroom he has reserved for himself for storage. The tenant may not unreasonably withhold consent for the landlord to gain access to that bedroom.

This decision is intended to clarify the rights and obligations of the parties. I decline to authorize the tenant to change locks at this point but if the landlord defies the instructions above the tenant may re-apply.

With this clarification of rights and obligations, I consider it unnecessary to issue a compliance order.

During the hearing the parties discussed the theft of some money of the tenant's and offsetting it against rent. That is not an issue fairly raised by the application and so I decline to adjudicate it. The tenant is free to re-apply in that regard.

The tenant's application refers to the landlord's claiming a rental supplement, causing the tenant problems with him obtaining his own supplement. Neither party filed evidence or testified about this part of the claim and so I dismiss it without leave to re-apply.

### Conclusion

The tenant's application is allowed in accordance with the relief described above.

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: August 11, 2020

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Residential Tenancy Branch