



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPT

### Introduction

In this dispute, the tenant seeks an order of possession pursuant to section 54 of the *Residential Tenancy Act* (the “Act”).

The tenant applied for dispute resolution on July 6, 2020 and a dispute resolution hearing was held on August 7, 2020. The tenant attended the hearing and was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The landlord did not attend.

The tenant testified that she served the Notice of Dispute Resolution Proceeding package on the landlord (including on a municipal co-landlord, which is not named in the tenant’s application) in-person on July 9, 2020. Two witnessed proof of service documents were submitted in evidence. Based on the oral and documentary evidence of the tenant I find that the landlord was served in accordance with sections 89(1)(a) and (b) of the Act.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issue of this application.

### Issue

Is the tenant entitled to an order of possession?

### Background and Evidence

The tenant testified that she signed, and entered into, a tenancy with the landlord on June 25, 2020. Both parties signed the written Residential Tenancy Agreement (the

“Agreement”), a copy of which was submitted into evidence. The Agreement included the names of the parties, and the address of the rental unit to be rented to the tenant. Monthly rent is \$500.00, and the tenant paid a security deposit of \$500.00 (which is, I note, in excess of the amount permitted under section 19(1) of the Act). Included in the Agreement is a statement on page two which states that “tenant is to provide property mngnt [management]; security & maintenance.”

A few days after the tenant moved some of her belongings into the rental unit, which is a house, someone, purportedly or possibly on behalf of one of the landlords changed the locks and posted a warning letter on the door. Apparently, the neighbourhood has had issues with vagrants and squatters.

The tenant contacted the landlord about not being able to access the property, to which the landlord simply said that “we’ve decided to go with another person,” and that the landlord found a better contract. No other notice, written or otherwise, was ever received by the tenant from the landlord in regard the tenancy.

### Analysis

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 54(1) of the Act states that

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.

In this dispute, the tenant entered into a tenancy agreement, which was signed by both parties. A “tenancy agreement” means, according to section 1 of the Act,

an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Moreover, “tenancy” means a tenant’s right to possession of a rental unit under a tenancy agreement.

Based on the facts of this case as presented to me, the tenant has a right to possession of the rental unit. These rights cannot be exercised when the landlord unilaterally decides to lock the tenant out of the property. And, in the absence of any legal explanation or justification for preventing the tenant access to the rental unit, the landlord is in breach of the fundamental right of the tenant to have possession of the rental unit.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving her claim for an order of possession pursuant to section 54(1) of the Act.

### Conclusion

**I hereby grant the tenant an order of possession, which must be served on the landlord and which is effective immediately.**

Should the landlord fail to comply with the order of possession, the tenant may file, and enforce the order, in the Supreme Court of British Columbia. If enforcement is necessary, the landlord will be liable for all costs related to that enforcement, including but not limited to the cost of bailiff services.

This decision is made on authority delegated to me under section 9.1 of the Act.

Dated: August 7, 2020

---

Residential Tenancy Branch