



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LRE, OLC, RP

### Introduction

This hearing was scheduled to convene at 11:00 a.m. on October 1, 2020 by way of conference call concerning an application made by the tenant seeking an order limiting or setting conditions on the landlord's right to enter the rental unit; an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order that the landlord make repairs to the rental unit or property.

The tenant attended the hearing, gave affirmed testimony, and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call.

The tenant testified that the landlord was served with the Application for Dispute Resolution and notice of this hearing, along with the tenant's evidentiary material (the Hearing Package) by registered mail on August 20, 2020, and the tenant has provided a copy of a Registered Domestic Customer Receipt addressed to the landlord and a Canada Post cash registered receipt bearing that date with the same tracking number, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence of the tenant has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the tenant established that the landlord's right to enter the rental unit should be limited due to COVID-19?
- Has the tenant established that the landlord should be ordered to comply with the *Residential Tenancy Act*, regulation or tenancy agreement with respect to maintenance and repairs to the rental unit and property?

- Has the tenant established that the landlord should be ordered to make repairs to the rental unit or property, specifically with respect to the furnace, the wood-burning fireplace, gas stove, security system and a tree?

### Background and Evidence

The tenant testified that he and a co-tenant originally commenced a tenancy relationship with the landlord for a tenancy commencing on February 1, 2019. The tenant moved out of the rental unit while the co-tenant remained, and the tenant moved back into the rental unit effective November 1, 2019. All parties entered into a new tenancy agreement effective November 1, 2019 and the tenant and co-tenant still reside in the rental unit.

Rent in the amount of \$2,000.00 is payable on the 31<sup>st</sup> day of each month for the following month, and there are no rental arrears. The landlord currently holds a \$1,000.00 security deposit and a \$1,000.00 pet damage deposit. The rental unit is the upper level of a house and a basement suite is also tenanted. The landlord does not reside on the rental property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that the house is listed for sale, and open houses are violations of public health during the COVID-19 Pandemic. During an open house, the realtors had roughly 30 people coming in and going out, in groups of people, which is also a violation. Access has to be controlled, but people were walking around everywhere. The tenant has provided copies of Public Health Orders, Real Estate Council publications and WorkSafeBC publications, and testified that it is recommended that there are no open houses in general, but contrary to the Public Health Order there is no safety plan, which is supposed to be posted for anyone visiting. The tenant seeks an order that the landlord provide the tenants with at least 15 to 17 days between viewings each month, so the tenant can visit his mother. Each time, they don't take much care. They've started only having 1 viewer at a time, and the tenants then have to self-monitor for 14 days to ensure they have no symptoms before the tenant can visit his elderly mother.

The tenant has been asking the landlord about repairs for health and safety. The furnace has a sticker on it showing that the last date that it was serviced was August, 2003. The tenant called the fire department about a home safety plan, and they recommended that the furnace be serviced annually. The tenant seeks an order that the landlord comply with Section 32 of the *Residential Tenancy Act* by servicing the furnace annually.

The tenant also seeks an order that the landlord service the furnace and vents. The landlord sent people over to check them and one told the tenant that the furnace needed to be replaced and that parts are required, which might take a month. The tenant called

some companies who advised that the parts are common and can be found in Canada. The tenant told the landlord that and offered to get it serviced many times and would take the cost off the rent, but the landlord wanted to wait for a month for parts. The landlord has been ignoring the tenant's requests and every request or attempt to contact the tenant except to ask for money.

The wood-burning fireplace wasn't cleaned when the tenant moved into the rental unit in February, 2019. It's not used in the spring or summer or most of the fall, however the tenant asks for an order that the landlord clean it as recommended in Residential Tenancy Policy Guideline 1.

The tenant also testified that a tree in the yard is very old and dying, and the tenant is worried that it may collapse in a windstorm which would pull the utility lines down. The tree is wrapped up in the utility lines, and photographs have been provided for this hearing. The tenant has mentioned it to the landlord many times but he won't do anything about it. At first, he said, "What can I do about it." The landlord asked the tenant to trim or cut it down, but the tenant advised that he can't do it, and all requests since have been ignored completely.

The rental home has a security system but the landlord has refused to give the tenant the code. The system's alarm has sounded often, and one time went on for 3 hours. The tenant contacted the security company who said it would cost about \$50.00 or \$100.00 to re-set it, but the landlord refused to allow the tenant to arrange that and take the cost off the rent, and since has entirely ignored the tenant.

The tenant also testified that the gas stove has never been serviced. The stove top gives off a very large flame. The tenant's research showed to clean it, which the tenant did, and to check for air flow. Apparently, the stove itself needs to be serviced or the flame could become large enough to start a fire that might be uncontrollable, and might not turn off due to the gas flow. The components need to be serviced.

The parties had a residential tenancy dispute and the landlord didn't attend the hearing and didn't seem to care. The parties attended a second hearing in March, 2020 about an illegal eviction. The landlord tried to evict the tenants and the tenant disputed the Notice to end the tenancy, and the tenant believes that the landlord thought he would win and the tenant would move out. Copies of the resulting Decisions have been provided as evidence for this hearing.

The co-tenant has 2 kids aged 7 and 15 who all live in the rental unit as well.

## Analysis

Firstly, with respect to real estate showings, I have reviewed the Public Health documentation and WorkSafeBC recommendations as well as real estate guidelines surrounding COVID-19. The tenant testified that after a showing, the tenant has to monitor symptoms before visiting his elderly mother. I have also reviewed the photographs and other material, and it's clear that prospective purchasers are not honouring the "wear a mask" mandate. The tenant simply wants safety, and I am satisfied that he is entitled to that and the realtors and landlord have failed in this regard. The tenant seeks an order that the landlord allow showings with at least 15 to 17 days between viewings each month, and I find that reasonable, and I so order.

A landlord has an obligation to repair and maintain a rental unit:

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(5 ) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

In this case, I accept the undisputed testimony of the tenant that the landlord has failed in that regard even though the tenant has asked for repairs and has gone the extra step in offering to arrange the repairs and pay for them, and deduct the amounts from rent. I have also reviewed all of the evidentiary material provided for the tenant and Residential Tenancy Policy Guideline 1 which specifies that:

- a landlord is responsible for repairs to appliances provided in the tenancy unless the damage was caused by the deliberate actions or neglect of the tenant.
- the landlord is responsible for inspecting and servicing the furnace in accordance with manufacturer's specifications, or annually, and for cleaning ducts and ceiling vents.
- the landlord is also responsible for cleaning and maintaining the fireplace chimney at appropriate intervals.
- the landlord is also responsible for maintaining and repairing the security system, and must give the tenant an access code.

- the landlord is also responsible for major property maintenance projects, such as tree cutting and pruning.

I am satisfied that the tenant has established the landlord's failure or refusal to deal with the maintenance issues, and I order the landlord to complete all of the above points before the end of October, 2020.

### Conclusion

For the reasons set out above, I hereby order the landlord to ensure that the tenant receives at least 15 days between showings for realtors and prospective purchasers.

I further order the landlord to maintain the rental property in accordance with Section 32 of the *Residential Tenancy Act*, and to complete the maintenance and/or repairs as set out above by no later than October 31, 2020.

This order is final and binding and may be enforced.

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: October 06, 2020

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Residential Tenancy Branch