



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OLC

### Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*, the *Residential Tenancy Regulation* and/or the tenancy agreement.

The Tenant stated that on September 17, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in August of 2021 was sent to the Landlord, via registered mail. The Building Manager acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

In September of 2021 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that he does not think this evidence was served to the Landlord. As the Tenant failed to establish that this evidence was served to the Landlord, it was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided:

Is there a need to issue an Order requiring the Landlord to comply with the *Act*, specifically to protect the Tenant's right to the quiet enjoyment of the rental unit?

Preliminary Matter

The parties were advised that I was inclined to dismiss the application for an Order requiring the Landlord to protect the Tenant's right to quiet enjoyment of the rental unit, as the parties agree that the rental unit was vacated in October of 2021.

Typically I would not consider an application for an Order requiring the Landlord to protect the Tenant's right to the quiet enjoyment of the rental unit when the Tenant is no longer occupying the unit, as the Tenant no longer has the right to the quiet enjoyment of that unit.

The Tenant stated that he wished to proceed with the hearing, as he wanted to protect the rights of other people living in the residential complex and he is considering seeking financial compensation for a breach of his right to quiet enjoyment.

The Agent for the Landlord stated that the Landlord wishes to proceed with the hearing, in hopes that it will prevent the need for a future hearing.

As both parties wish to proceed with the hearing and it is possible that this hearing will eliminate the need for a future hearing regarding compensation flowing from a breach of the right to quiet enjoyment, I concluded that it was reasonable to proceed with the hearing.

Both parties are advised that my decision in regard to this matter will be final and binding. In the event I determine that the Landlord has breached the Tenant's right to the quiet enjoyment of his rental unit, the Tenant may be entitled to apply for compensation in regard to that breach. In the event I determine that the Landlord has not breached the Tenant's right to the quiet enjoyment of his rental unit, it is highly unlikely the Tenant would be awarded compensation in regard to that breach.

In the event the Tenant seeks such compensation through the Residential Tenancy Branch, the parties are strongly encouraged to submit this decision as evidence for those proceedings.

Background and Evidence:

The Tenant stated that this tenancy began in January of 2010. The Building Manager stated that it began on January 15, 2012. The parties agree that there are many rental units in this multi-level residential complex and that there are no businesses.

The Landlord and the Tenant agree that the rental unit was vacated in October of 2021.

The Tenant is seeking an Order requiring the Landlord to remove signs that require tenants to wear masks in common areas of the residential complex.

The Tenant submitted a memorandum, dated August 24, 2021, which both parties agree was posted in the residential complex. The memorandum declares, in part, that a Provincial Health Order which became effective August 25, 2021, makes mask wearing mandatory in all indoor public spaces.

The Building Manager stated that the aforementioned memorandum was posted on August 24, 2021, which the Tenant does not dispute. The Building Manager stated that similar memorandums are still posted in the residential complex, which the Tenant does not dispute.

The Tenant submitted a screen shot of information that he submits was provided on a government website, which reads:

*As of Wednesday, Aug. 25, 2021, masks must be worn in all indoor public spaces throughout B.C. to help slow the transmission of COVID-19 as B.C. prepares for the fall and respiratory illness season.*

*A new order from the provincial health officer will require people 12 and older to wear masks in indoor public settings, regardless of vaccination status. These settings include:*

- malls, shopping centres, coffee shops and retail and grocery stores;*
- liquor and drug stores;*
- airports, city halls, libraries, community and recreation centres;*
- restaurants, pubs and bars (unless seated);*
- on public transportation, in a taxi or ride-sharing vehicle;*
- areas of office buildings where services to the public are provided;*
- common areas of sport and fitness centres when not engaged in physical activity;*
- common areas of post-secondary institutions and non-profit organizations; and*

- *inside schools for all K-12 staff, visitors and students in grades 4-12.*

The Tenant did not provide a copy of the Provincial Health Order that is referenced in the screen shot provided by the Tenant. I selected one of the email links provided in the Tenant's evidence and was directed to a Provincial Health Order, dated December 03, 2021. The following excerpts from this Order are, in my view, somewhat relevant to the issue before me:

*P. Properly worn, face coverings are one measure that has been shown to suppress the transmission of the SARS-CoV-2 virus and to reduce the risk of contracting COVID-19 in both the vaccinated and the unvaccinated. The non-wearing of masks by people gathering indoors, some of whom might be infected and some of whom might be susceptible to infection, interferes with the suppression of the SARS-CoV-2 virus;*

*Q. I recognize the effect of the measures I am putting in place to protect the health of the residents of BC and, with this in mind, have engaged and will continue to engage in a process of reconsideration of these measures, based upon the information and evidence available to me, including infection rates, sources of transmission, the presence of clusters and outbreaks, particularly in facilities, the number of people in hospital and in intensive care, deaths, the emergence of and risks posed by virus variants of concern, vaccine availability, immunization rates, the vulnerability of particular populations and reports from the rest of Canada and other jurisdictions, with a view to balancing the interests of the people affected by the Order, including constitutionally protected interests, against the risk of harm to residents of BC created by the presence of unvaccinated persons in BC;*

*R. I further recognize that constitutionally-protected interests include the rights and freedoms guaranteed by the Canadian Charter of Rights and Freedoms. These rights and freedoms are not, however, absolute and are subject to reasonable limits, prescribed by law as can be demonstrably justified in a free and democratic society. These limits include proportionate, precautionary and evidence-based restrictions to prevent loss of life, serious illness and disruption of our health system and society. When exercising my powers to protect the health of the public from the risks posed by COVID-19, I am aware of my obligation to choose measures that limit the Charter rights and freedoms of British Columbians less intrusively, where doing so is consistent with public health principles;*

*S. In addition, I recognize the interests protected by the Human Rights Code and have taken these into consideration when exercising my powers to protect the health of the public from the risks posed by COVID-19;*

*T. I am also mindful that the volume of requests for reconsideration of my Orders, and the time and expertise which considering them entails, has become beyond my capacity and that of my*

*office and team of medical health officers to manage, and is using resources which are better directed at assessing and responding to the protection of the public as a whole;*

*U. I have reason to believe and do believe that (a) the presence of the public, operators, workers, school staff persons and students, postsecondary staff persons and students, participants in worship services and events in indoor settings where they intermingle with each other without wearing a face covering constitutes a health hazard under the Public Health Act; (b) in order to mitigate the risk of the transmission of SARS-CoV-2 arising from the presence of the public, operators and workers, school staff persons and students, postsecondary staff persons and students, participants in worship services and events in indoor settings where they intermingle without wearing a face covering, it is necessary for me to exercise the powers in sections 30, 31, 32, 39, 53, 54, and 67 (2) of the Public Health Act TO ORDER as follows:*

**THIS ORDER REPLACES MY ORDER MADE ON OCTOBER 29, 2021 WITH RESPECT TO FACE COVERINGS IN INDOOR PUBLIC SPACES.**

*Face coverings required in indoor public spaces, school spaces and post-secondary spaces and at inside events – visitors*

*2 (1) Except as provided under section 3 a visitor must wear a face covering, in accordance with subsection (2), while inside an indoor public space, a school space or a post-secondary space or present at an inside event.*

*(2) A face covering must be worn in a manner that covers the nose and mouth.*

*(3) A visitor who is not wearing a face covering as required in subsection (2), must not be inside an indoor public space, school space or postsecondary space or present at an inside event.*

In the Provincial Health Order, dated December 03, 2021, the following definitions are also relevant to the issue before me:

“indoor public space” means the indoor area of any of the following but does not include a working area

(a) a building or structure that is provided for the common use of all occupants and invitees of the building or structure, including lobbies, hallways, public bathrooms and elevators, that is used as

(i) a retail business,

(ii) a service business,

(iii) an office building other than office, cubicle or other room in an office building to which a member of the public has been invited by an operator or worker for the purpose of receiving a service;

(iv) a hotel,

(v) a restaurant, pub, bar or other business that prepares and sells food or drink,

(vi) a mall or shopping centre,

(vii) a pharmacy,

(viii) a fitness facility or a sport facility,

(ix) a place in which a non-profit organization provides goods or services to the public,

- (x) a place that provides cultural, entertainment or recreational services or activities, including a theatre, cinema, concert hall, arcade, billiard hall, museum, gallery or library
- (xi) a conference centre, community hall or other place that hosts public events;
- (xii) a courthouse; or
- (xiii) a worship space and attached premises operated by a faith community when used for secular purposes;
- (b) a taxi, limousine, perimeter seating vehicle, perimeter seating bus, vehicle used for a commercial ride sharing service or other vehicle for hire;
- (c) a public transportation vehicle;
- (d) the indoor or sheltered portion or a terminal, station or other location at which persons
  - (i) load onto or unload from a public transportation vehicle, or
  - (ii) wait to load onto a public transportation vehicle;
- (e) an airport, heliport or seaplane terminal.

The Tenant submits that the memorandum posted by the Landlord on August 24, 2021 is false because it declares that masks must be worn in all public spaces, but the Provincial Health Order does not specifically declare that masks are required in common areas of apartment buildings, which he contends is private property.

The Tenant submits that the requirement to wear a mask is a breach of the Tenant's right to the quiet enjoyment of the rental unit, specifically a breach of sections 28(b) and 28(d) of the *Act*.

The Tenant stated that he did not wear a mask in common areas of the residential complex and that on 6 to 8 occasions other occupants made threatening comments, such as:

- you are going to kill someone;
- something should be done about "people like you"; and
- he is going to be reported to police/management.

The Tenant stated that he did not report the aforementioned interactions to the Landlord, however in his email of May 31, 2021 he informed the Landlord that the requirement to wear masks can "potentially lead to unnecessary conflict amongst the residents".

The Agent for the Landlord stated that:

- the requirement to wear a mask was imposed for the "health and safety of tenants and staff";
- the requirement to wear a mask and the memorandum posted on August 24, 2021 is consistent with the "spirit" of the Public Health Order;

- the Tenant has never informed the Landlord that he is being bothered by other occupants of the residential complex because he is not wearing a mask in common areas;
- other occupants of the residential complex have expressed concern that some people are not wearing masks in common areas, although the Tenant has not been named in those reports; and
- no other occupant of the complex has expressed concern to the Landlord about the requirement to wear masks in common areas.

The Tenant stated that he knows at least a dozen occupants of the residential complex who do not support the requirement to wear masks in common areas of the complex.

The Tenant submits that the Landlord does not have the authority to require occupants to wear masks in common areas of the complex, as the rule does not comply with the Provincial Health Order or the *Residential Tenancy Act*.

#### Analysis:

On the basis of the undisputed evidence, I find that the Landlord posted a memorandum, dated August 24, 2021, in which the Landlord declared, in part, that a Provincial Health Order which became effective August 25, 2021, makes mask wearing mandatory in “all indoor public settings”.

Although I do not have authority to enforce any Provincial Health Orders, I find it reasonable for me to interpret such Orders when they relate to areas within my jurisdiction.

On the basis of the evidence provided by the Tenant, I find that the information provided in the Landlord’s memorandum is not entirely consistent with the Provincial Health Order, dated December 03, 2021, which I believe is the most recent Order. To be entirely consistent with the December 03, 2021 Order, the memorandum would declare that mask wearing is mandatory in “indoor public settings, as that term is defined in the Provincial Health Order”, rather than “in all indoor public spaces”.

On the basis of the evidence submitted by the Tenant and the Provincial Health Order, dated December 03, 2021, I agree with the Tenant’s submission that the Provincial Health Order does not require masks to be worn in common areas of residential complexes, presuming those residential complexes do not have retail or office space.

On the basis of the undisputed evidence, I find that there are still signs posted in the residential complex that require masks to be worn in common areas of the residential complex.

Section 28 of the Act reads:

*A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

Residential Tenancy Branch Policy Guideline #6, with which I concur, reads, in part:

*A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.*

*Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment. In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.*

I find, given the information provided in the Provincial Health Order dated December 03, 2021, that it is reasonable for the Landlord to require people to wear masks in common areas of this multi-level residential complex. Although this requirement exceeds the rules established by the Provincial Health Order, I find it is a reasonable attempt to protect the health and safety of people within the residential complex.

I find that it is clear from the Provincial Health Order that Dr. Henry has concluded that "properly worn, face coverings are one measure that has been shown to suppress the transmission of the SARS-CoV-2 virus and to reduce the risk of contracting COVID-19 in both the vaccinated and the unvaccinated" and that she has reason to believe that mingling in indoor settings without wearing a face covering "constitutes a health hazard under the Public Health Act". I find that this conclusion strongly suggests that the



Landlord's rule regarding face masks is reasonable, given that people in large residential complexes typically mingle in common spaces, such as lobbies and elevators.

As the face mask rule is reasonable and is intended to protect individuals using common areas of the residential complex, I find that it does not breach the Tenant's right to freedom from unreasonable disturbances.

As Dr. Henry has concluded that the wearing of masks suppresses the transmission of COVID-19, I find it reasonable to conclude that wearing of masks in common areas of large residential complexes areas is for the common good of the occupants and that the rule regarding masks does not constitute a significant interference.

Although I accept that the Tenant objects to wearing a mask in common areas of the complex, I find that the mask requirement is a reasonable attempt to protect the quiet enjoyment of the occupants of the complex.

I find that the rule requiring people to wear masks in common areas of this residential complex is not a breach of section 28 of the *Act*. I therefore dismiss the Tenant's application for an Order requiring the Landlord to remove signs that require masks to be worn in common areas.

Although the memorandum posted by the Landlord may not be entirely consistent with the December 03, 2021 Provincial Health Order, I find that any errors contained in the memorandum have no significant impact on the Tenant's right to quiet enjoyment of the rental unit.

On the basis of the undisputed evidence, I find that other occupants of the residential complex have made disparaging remarks to the Tenant when they have observed him without a mask in common areas of the residential complex. On the basis of the undisputed evidence, I find that the Tenant has not provided the Landlord with details of the comments made.

While I accept that the Tenant informed the Landlord, in his email of May 31, 2021, that the requirement to wear a mask could "potentially lead to unnecessary conflict amongst the residents", I do not find that this serves as notice that he was being bothered by other occupants. This comment appears to be warning the Landlord of potential conflict, rather than reporting a specific problem. In that same email the Tenant

declares that he may name the Landlord in litigation if he gets “into any conflict with any of the multitude of Covidist irrational fear mongers as I go about my business”. This comment, in my view, could reasonably be interpreted to mean that he has not yet encountered conflict.

In circumstances where occupants of a residential complex are disturbing the quiet enjoyment of a tenant by making disparaging comments, a landlord may be found to be breaching the tenant’s right to quiet enjoyment if they do not take reasonable steps to intervene. In these circumstances, I find that the Tenant did not inform the Landlord of the disparaging comments and I therefore find that the Landlord could not reasonably be expected to intervene. I therefore cannot conclude that the Landlord breached the Tenants right to quiet enjoyment in regard to those comments.

In adjudicating this matter, I have placed no weight on the Tenant’s submission that the Landlord does not have authority to require occupants to wear masks in common areas of the complex because the rule does not comply with the *Act*.

Section 5(1) of the *Act* prevents landlords from avoiding or contracting out of the *Act*. Section 6(3)(a) of the *Act* stipulates that a term of a tenancy agreement is not enforceable if the term is inconsistent with the *Act*. While these sections prevent a landlord from enforcing terms or rules that specifically contravene the *Act*, there is nothing in the *Act* that prevents a landlord from imposing rules that are reasonable and that are not in conflict with the *Act*.

As I have concluded that the mask wearing rule is reasonable and it does not, in my view, contravene the *Act*, I find the Landlord has the right to require that masks be worn in common areas.

In adjudicating this matter, I have placed no weight on the Tenant’s submission that he knows other people in the residential complex that do not support the rule that requires mask to be worn in common spaces. A landlord is not obligated to have the consent of all occupants prior to imposing a rule or policy. Providing the rule is reasonable and does not contravene the *Act*, a landlord may impose rules.

### Conclusion:

The Application for Dispute Resolution is dismissed, without leave to reapply.

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: January 11, 2022

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Residential Tenancy Branch