



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LRE, RP, PSF, OLC, LAT, MNDCT, RR

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on October 16, 2021, in which the Tenant claimed the following relief:

- an Order permitting the Tenant to change the locks on the rental unit;
- an Order restricting the Landlords' right to enter the rental unit;
- an Order that the Landlord:
  - make repairs to the rental unit;
  - provide services or facilities as required by law;
  - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement; and,
- an Order for monetary compensation from the Landlord.

The hearing of the Tenant's Application was conducted by teleconference at 9:30 a.m. on December 17, 2021. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 10:11 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package.

The Tenant testified that he served the Landlord with the Notice of Hearing and the Application on October 23, 2021 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of October 28, 2021 and I proceeded with the hearing in their absence.

#### Preliminary Matter—Date and Delivery of Decision

The hearing of the Application concluded on December 17, 2021. This Decision was rendered on January 27, 2022. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30 day period.

#### Preliminary Matters—Relief Sought

The Tenant submitted a substantial amount of evidence in support of his claim. Some of this evidence appears to relate to previous applications and/or relates to relief not sought by the Tenant in the current application. Additionally, the Application itself includes written submissions from the Tenant that are unclear or appear to be unrelated to the claims before me, or which relate to matters which have already been decided in previous decisions of the Residential Tenancy Branch.

*Tenant's Request for an Order permitting the Tenant to change the locks on the rental unit*

A review of Branch records confirms that the Tenant was permitted, by order made March 1, 2019 to change the locks. The file number for that matter is included on the unpublished cover page of this my Decision. The Tenant stated he was aware of this, but not aware he was required to provide the Landlord with a key.

As this relief has already been granted, I dismiss the Tenant's request for a *further* order pursuant to section 31 of the *Act*. The Tenant is reminded that he must provide a key to the Landlord.

*Tenant's Request for an Order that the Landlord comply with the Residential Tenancy Act, the Residential Tenancy Regulation, or the residential tenancy agreement and an Order restricting the Landlords' right to enter the rental unit*

The Tenant made a prior application wherein he requested an Order that the Landlord make repairs to the rental unit; the current application mirrors that request. By Decision dated June 9, 2021 Arbitrator Green made the following orders relating to the Tenant's request for a repair order:

2. The landlord shall have the unit inspected within 10 days of the date of this Decision by qualified service provider(s);
3. Within 5 days of the inspection, the service provider(s) shall provide to the parties a written report of the details of the inspection including the current condition of the unit and the sufficiency of the lock as well as recommended required maintenance with associated cost.
4. Within 30 days of the date of the report, the landlord shall carry out the recommended repairs and shall provide written confirmation to the tenant.
5. If the landlord fails to carry out the terms of this Order or any aspect thereof, the tenant may deduct \$400.00 from his rent payable on the next due date following the non-compliance and continuing thereafter on the first of each subsequent month until such time as the landlord complies with the terms hereof.

The parties attended a further hearing before Arbitrator Green on September 27, 2021 at which time she found the Landlord did not comply with her previous order and permitted the Tenant to withhold all rent due. The file numbers for that hearing is also included on the unpublished cover page of this my Decision.

In the hearing before me the Tenant confirmed that his requests with respect to the Landlord complying with the legislation and the tenancy agreement as well as his request to restrict the Landlord's right to enter the rental unit relate to his request that the Landlord be relieved of his obligation to inspect the rental unit as he did not want the Landlord to enter the unit for the inspection. In essence, the Tenant is asking me to vary the decisions and orders of Arbitrator Green.

As discussed during the hearing, I do not have jurisdiction to vary previous decisions of the Branch. The legal principle of *Res judicata* ("the matter is judged") prevents a party from pursuing a claim that has already been decided and precludes re-litigation of a matter. Additionally, section 77(3) of the *Act* provides that a Decision is *final* and binding. An arbitrator may not vary another arbitrator's decision, only a B.C. Supreme Court judge on application for Judicial Review to the B.C. Supreme Court can vary an arbitrator's decision. Simply put, once an Arbitrator makes an Order, the order must be complied with, unless the parties agree otherwise.

For these reasons, I dismiss these requests. While the Tenant may be hesitant to have the Landlord, or persons hired by the Landlord, attend the rental unit, Arbitrator Green found this to be a necessary step in achieving the Tenant's request for repairs to the rental unit.

The Tenant is cautioned that he must not prevent the Landlord from entering the rental unit if the Landlord's entry is to perform the inspections previously ordered and the entry complies with section 29 of the *Act*.

*Tenant's Request for an Order that the Landlord make repairs to the rental unit*

The Tenant confirmed that the repairs to the lock and the window were completed. He further confirmed that he only sought orders relating to replacement of the rental unit carpet, servicing of the refrigerator, replacement of the front door, and inspection/repair of the toilet.

As noted above, the Tenant made a prior application for a related repair order. The repairs requested by the Tenant in the current Application mirror those requested in the Application before Arbitrator Green; as such, that request has already been considered. For the same reasons as outlined above, I dismiss the Tenant's request for a *further* order as a decision has already been made on its merits by Arbitrator Green.

*Tenant's Request for an Order for monetary compensation from the Landlord.*

On his Application, the Tenant wrote that he requested \$8,000.00 in monetary compensation from the Landlord for the following reasons:

*Rent free yr until place is demolished because landlords caught lying about selling house 2xs & about demolishing. In past disputes, 2nd L.L. Mr [W.] admitted hes an agent for 1st L.L. Mr. [K.]. Mr [W.] told me he was the new owner. The arbitrator offered a rent free yr. I denied it to show what I'd do if they don't stop harassing me, to be able to live here & get along because they said if I won a rent free yr I wouldn't last here 2 months. 3rd L.L.'s admitted there agents for 1st L.L. too*

During the hearing before me the Tenant failed to clarify the above, nor did he make any submissions with respect to this monetary claim. He stated that he simply wanted free rent if the Landlord did not make repairs to the rental unit as requested.

Again, this issue was also decided by Arbitrator Green in her Decision dated September 29, 2021 wherein she ordered as follows:

*As the landlord has failed to comply with the RTB Order, I direct that the tenant may withhold all monthly rent due from October 1, 2021 onward until the landlord complies with the Decision and Order of June 09, 2021; the landlord's compliance shall be determined by an Arbitrator or by written agreement by the parties.*

The Tenant is reminded that he is already permitted to withhold all rent due from October 1, 2021 *onward* such that he is currently not obligated to pay rent.

The Landlord is cautioned that continued non-compliance with Orders of the Residential Tenancy Branch may attract administrative penalties pursuant to Part 5.1 of the *Act*.

The Tenant is also reminded that he must comply with prior orders and permit the Landlord entry to the rental unit to complete necessary repairs.

*Tenant request for an order that the Landlord provide services or facilities as required by law*

Although the Tenant included a written request for access to the laundry facilities, he did not address this issue during the hearing before me as he spent the entirety of the hearing addressing issues which had already been decided in previous hearings. I find this was likely an oversight of the Tenant, not an indication that this issue was not important to him. I therefore dismiss *with leave to reapply* the Tenant's request for an

Order that the Landlord provide services and facilities as required by the tenancy agreement.

I have the same concerns as set out in the previous decisions of Arbitrator Green as to the Tenant's ability to advance his interests and advocate on his own behalf. This tenancy has clearly been problematic for the Tenant and it is clear has spent considerable amounts of time preparing for hearings before the Branch. Unfortunately, he struggles to focus his submissions and evidence on the issues, and at times, does not appear to understand what has already been decided/ordered. The Tenant is strongly encouraged to engage the services of an advocate to assist him in pursuing any further claims before the Branch.

### Conclusion

The Tenant's request for an Order that the Landlord provide services or facilities as required by law is dismissed with leave to reapply. The balance of the Tenant's Application is dismissed without leave as the relief sought has already been decided in previous decisions of the Residential Tenancy Branch.

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 27, 2022

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Residential Tenancy Branch