



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, LRE

### Introduction

This hearing dealt with twice adjourned Applications for Dispute Resolution filed by the Tenants under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenants’ first Application for Dispute Resolution was made on May 11, 2021. The Tenants applied for an order for the Landlord to comply with the Act and/or tenancy agreement and for an order to restrict the Landlord’s right to enter the rental unit.

The Tenants’ second Application for Dispute Resolution was made on June 9, 2021. The Tenants applied to cancel a Two-Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on May 28, 2021, and for an order to restrict the Landlord’s right to enter the rental unit.

One of the Landlords and the Landlord’s legal counsel (the “Landlord”) and both of the Tenants attended this hearing and were each affirmed to be truthful in their testimony. The Tenants and Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

This final decision should be read in conjunction with the two interim decisions dated September 20, 2021, and January 20, 2022.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Are the Tenants entitled to an Order for the Landlord to comply with the Act?
- Are the Tenants entitled to an Order to suspend or set conditions on the Landlord's right to enter the rental unit?

### Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on September 1, 2019, and that rent in the amount of \$2,100.00 per month is to be paid by the first day of each month. The parties also agreed that the Landlord is holding a \$1,050.00 security deposit and a \$1,050.00 pet damage deposit for this tenancy. Both parties submitted a copy of the tenancy agreement and a attached two-page addendum into documentary evidence.

The Landlord and Tenants agreed that the rental property is a two-unit rental building in which the Tenants rent the upper unit.

The Tenants testified that the Landlord and the Landlord's agents have repeatedly entered their rental unit without providing the required written notice to enter. The Tenants are requesting that the Landlord's right to enter the rental unit be restricted due to their breaches of the *Act* and that the Landlord be ordered to comply with section 29 of the *Act* regarding written notice for entry.

The Tenants testified that the Landlord does not provide proper written notice before they or their agents attend the rental unit. The Tenant testified that they had asked the Landlord and their Agents to respect their concerns regarding Covid-19 and not allow too many people in the rental unit during showings, as the Landlord is attempting to sell the property, and to arrange for showing times that work for the Tenants.

The Landlord testified that their rental agent always provides property written notice for all showings and that they have a right to sell the property, even during the covid-19 pandemic. The Landlord agreed that the Tenants had requested a reduced showing schedule but that this did not work for their realtor, so notice is issued each time the realtor wishes to show the property.

When asked, the Tenants agreed that the realtor does issue written notices for showing but that they are intrusive and that they are concerned about so many people coming through the home due to the covid-19 pandemic.

The Tenants testified that the Landlord and their Agents also attend the rental property and access the backyard without providing any written notice. The Tenants testified that the backyard was included in their tenancy and that the Landlord should not just access it without written notice or their consent.

The Landlord testified that the backyard is a common area on the property, which can be accessed by either the upper or lower renter and the Landlord. They are not required to provide the Tenants with written notice to access a common area.

The Tenants testified that the Landlord issued a written notice that a property inspector would attend the rental property to conduct an inspection. The Tenants testified that this notice indicated that the inspector would be inspecting the lower unit and the exterior of the rental property, but not their unit. The Tenant testified that even though the notice did not specify their unit would be part of the property inspection, the inspector did enter their rental unit for this inspection. The Tenants submitted a copy of this notice of entry into documentary evidence.

The Landlord testified that the written notice to access the rental property for the inspection clearly stated that the whole property would be inspected, including this rental unit.

### Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities, I find that:

The Tenants are requesting that the Landlord's right to enter the rental unit be suspended due to the Landlord repeatedly breaching of section 29 of the Act, which states the following:

***Landlord's right to enter rental unit restricted***

*29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

*(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*

*(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*

*(i) the purpose for entering, which must be reasonable;*

*(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*

*(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*

*(d) the landlord has an order of the director authorizing the entry;*

*(e) the tenant has abandoned the rental unit;*

*(f) an emergency exists and the entry is necessary to protect life or property.*

The Tenants claim that the Landlord attends the rental property on a regular basis and that during these visits, the Landlord access the back yard, which is included in their tenancy, without written notice. The Landlord has submitted that the rental property has more than one rental unit and that the exclusive use of the backyard is not included in these Tenants' tenancy agreement as the backyard is a common area. Therefore, they do not need to give written notice to access the backyard of the rental property.

The Landlord and Tenants have offered conflicting verbal testimony regarding the use of the backyard for this rental property. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, as the applicants to these proceedings, I find that the Tenants hold the burden of proof.

I have reviewed the 159 pages of documents submitted into evidence by the Tenants for these proceedings, which included a copy of the tenancy agreement and attached addendum for this tenancy. I noted that none of these documents show an agreement between the Tenants and the Landlord regarding exclusive use of the backyard of this rental property. Specifically, after reviewing the tenancy agreement signed between these parties, I find that the exclusive use of the backyard is not part of this tenancy. As the backyard was not included as part of this tenancy, I find that the backyard is a common area, and that the Landlord is not required to provide the Tenants with written notice before accessing the backyard.

The Tenants have also claimed that the Landlord did not provide clear written notice before accessing their rental unit to conduct a property inspection. After reviewing the notice of entry, I find that the notice does indicate that the Landlord's agent would be inspecting the whole rental property.

Overall, I find that there is insufficient evidence before me to prove that the Landlord or the Landlord's Agents breached the *Act* in their access of the rental unit during this tenancy. Therefore, I dismiss the Tenants request to restrict the Landlord's access to the rental unit.

The Tenants have also asked that the Landlord be ordered to comply with the *Act* when issuing notices to enter the rental unit. In order to issue an order to comply with the *Act*, the Tenants must first prove that the Landlord had breached the *Act*. As stated above, I have reviewed all of the testimony and documentary evidence that I have before me in this case, and I find that there is insufficient evidence before me to show that the Landlord or the Landlord's Agents had breached section 29 of the *Act* during this tenancy. In the absence of evidence of a breach, I decline to issue the requested order to comply with the *Act*.

Conclusion

The Tenants' applications are dismissed.

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: March 14, 2022

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Residential Tenancy Branch