



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, LRE, LAT, OLC, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- authorization to change the locks, pursuant to section 31;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and the landlord's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

The tenant testified, and the agent confirmed, that the tenant served the agent with the notice of dispute resolution form and supporting evidence package. The agent testified, and the tenant confirmed, that the agent served the tenant with the landlord's evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue- Jurisdiction

The tenant's application for a Monetary Order for damage or compensation states:

I no longer have quiet enjoyment of my home due to a failure to accommodate my disability, something they are obligated to do so and failure of which is a violation of my fundamental human right. I am requesting a refund of rent paid since this began on May 10, until such time as this is resolved, as calculated in the attached. Because I have not simply lost quiet enjoyment, but also had my basic human rights violated, I am requesting 3x the daily amount (68.17) for each day this continues.

The tenant's application for an Order that the landlord's right to enter be suspended or restricted states:

My Landlord has repeatedly ignored my request for a reasonable accommodation for my disability related to the times given for them to enter my suite for inspections/maintenance. They provide notice in advance but timeframes are overly-broad. I have multiple times requested a reasonable accommodation; they have simply refused to reply to these request. This has occurred twice since May 2022. I am scared that my landlord will provide notice to enter and ignore my request again and enter my home.

The tenant's application for authorization to change the locks states:

I believe my landlord will soon again request an inspection of my suite, or other reason for entering. I believe that even if I again ask for accommodation they will ignore that. I have significant ongoing anxiety and fear about them entering without me being here. I don't feel secure in my home. I am fully disabled and this makes my disability much worse. I do not feel safe because [the landlord] also actively patrols our hallways 7 days a week to listen and see if people are breaking their lease.

The tenant's application for an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement states:

I want [the landlord] to provide reasonable accommodation for my disability. Due to their egregious failure to do so, limiting their access to my suite is reasonable. I want [the landlord] to immediately cease patrolling hallways for lease violations. This is an unacceptable violation of my privacy (and that of others) as they can hear anything happening in the suites in this building. My right to privacy supersedes any marginal benefit they are seeking.

I provided both parties with an opportunity to give submissions on my jurisdiction to hear the tenant's application for dispute resolution.

The agent submitted that the Residential Tenancy Branch cannot make findings on disability claims which is under the purview of the British Columbia Human Rights Tribunal. The agent submitted that the Residential Tenancy Branch does not have jurisdiction to hear this dispute.

The tenant testified that they were not sure on the matter of jurisdiction but believed that because they were seeking an order restrict the landlord's entry, change locks, comply with the act and a monetary Order for loss of quiet enjoyment, they believed the Residential Tenancy Branch was the correct forum.

It is my determination that all of the tenant's claims are primarily based on an alleged breach of the British Columbia Human Rights Act (BCHRA). Pursuant to section 62 of the *Act*, I find that I do not have jurisdiction to make findings under the BCHRA.

I find that the tenant's application for an Order for the landlord to comply with the *Act* is actually an application for the landlord to comply with the BCHRT, which I do not have authority to grant.

I find that the tenant's claim for loss of quiet enjoyment is more accurately described as a claim for monetary damages arising out of an alleged breach of the BCHRA which I do not have authority to grant.

I also find that the tenant's application to change the locks and restrict the landlord's right of entry require a finding that the landlord breached the BCHRA. As stated earlier in this decision, pursuant to section 62 of the *Act*, I do not have authority to make such a finding.

Pursuant to section 62 of the *Act*, I find that I do not have authority to make any findings of alleged breaches of the BCHRA. I find that the Residential Tenancy Branch is not the correct forum for this dispute, at this time.

As jurisdiction was denied, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord. The tenant's application for recover of the filing fee is dismissed without leave to reapply.

### Conclusion

Jurisdiction is denied.

The tenant's application for recovery of the filing fee 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: December 02, 2022

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Residential Tenancy Branch