



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding 1108270 B.C LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPT

### Introduction

On February 18, 2023, the Tenant applied for a Dispute Resolution proceeding seeking an Order of Possession pursuant to Section 54 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing, and R.H. attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

It should be noted during the hearing that despite the parties being informed that they would each have an opportunity to make submissions, and then being advised not to interrupt when the other party was talking, both parties could not abide by this and would constantly interject over each other. As a result, each party required being muted when the other party was providing testimony.

The Tenant advised that the Notice of Hearing package and some evidence was served to the Landlord by email on March 4, 2023, and R.H. confirmed that this package was received. Based on the undisputed testimony before me, I am satisfied that the Landlord was duly served the Notice of Hearing package and some evidence.

The Tenant then advised that she served additional evidence to R.H. by email, but she was unsure of when this was done. She then stated that it was emailed on March 9 and March 19, 2023. R.H. stated that she did not receive this additional evidence. Given that the Tenant's evidence must have been served to the Landlord with the Notice of Hearing package, in accordance with Rule 10.2 of the Rules of Procedure (the "Rules"), I have excluded this additional evidence and will not consider it when rendering this Decision. However, I have accepted the evidence that was served with the Notice of Hearing package, and will consider it when rendering this Decision.

R.H. advised that she placed the Landlord's evidence in front of the main entrance to the property on March 16, 2023. The Tenant confirmed that she received this evidence on that day, and that she could view the digital evidence. Despite this evidence not being served in a manner in accordance with the *Act*, as it was placed in front of the main entrance to the building and not attached to the Tenant's door, as the Tenant received this in accordance with the timeframe requirements of Rule 10.5 of the Rules, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Tenant entitled to an Order of Possession?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

R.H. advised that the tenancy started on November 1, 2021, that rent was owed in the amount of \$1,280.00 per month, that it was due on the first day of each month, and that a security deposit of \$640.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence for consideration.

She stated that the tenancy was supposed to end on January 31, 2023, by way of a mutual agreement and a 10 Day Notice to End Tenancy for Unpaid Rent, dated January 15, 2023. As well, she testified that the Tenant informed her on January 12, 2023, and February 1, 2023, that she would not be returning to the rental unit. However, R.H. confirmed that she never received the keys back from the Tenant.

R.H. submitted that she then changed the locks to the main entrance of the building on February 12, 2023, and that she did not provide a key to the Tenant after doing this. She acknowledged that she never applied for Dispute Resolution to obtain an Order of Possession, and that she did not have any authority under the *Act* to change the locks without providing the Tenant a key. She submitted varying reasons for why she believed it was justified in changing the locks, such as: safety for the building and due to the Tenant's non-payment of rent.

She advised that the Tenant had abandoned the rental unit; however, she provided contradictory testimony about whether or not the Tenant's property was still in the rental unit after she changed the locks to the main entrance. She testified that the rental unit was rented to a new tenant as of April 1, 2023.

The Tenant confirmed that the tenancy started on November 1, 2021, and that rent was due on the first day of each month; however, she stated that rent was \$1,300.00 per month. She confirmed that a security deposit of \$640.00 was also paid. As well, she acknowledged that R.H. changed the locks to the main entrance of the building, and that she is having difficulty getting her personal property back from the rental unit.

The Tenant made various submissions about her dissatisfaction with the manner that R.H. managed this tenancy. As well, the Tenant brought up a host of personal issues. However, little of the Tenant's submissions were relevant to the matter that I must consider on this Application.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 31 of the *Act* outlines the prohibitions on changes to locks and other access, and states the following:

*(1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.*

*(1.1) A landlord must not change locks or other means of access to a rental unit unless*

*(a) the tenant agrees to the change, and*

*(b) the landlord provides the tenant with new keys or other means of access to the rental unit.*

Moreover, Section 57 of the *Act* outlines what happens if a Tenant does not leave when the tenancy has ended. An overholding Tenant is defined as a Tenant who continues to occupy a rental unit after the Tenant's tenancy is ended. Furthermore, this Section states the following:

*(2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.*

*(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.*

*(4) If a landlord is entitled to claim compensation from an overholding tenant under subsection (3) and a new tenant brings proceedings against the landlord to enforce his or her right to possess or occupy the rental unit that is occupied by the overholding tenant, the landlord may apply to add the overholding tenant as a party to the proceedings.*

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, given the contradictory

testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, the undisputed evidence is that R.H. changed the locks to the main entrance of the building on February 12, 2023, and did not provide the Tenant with a key, thereby preventing the Tenant from being able to access the building and her rental unit. Moreover, the consistent and undisputed evidence is that R.H. did so without first applying for an Order of Possession and then being granted a Writ of Possession, by the Supreme Court, as required under the *Act*. Regardless of the reasons R.H. believed it was appropriate to change the locks, this action was prohibited under the *Act*.

Furthermore, while she claimed that her actions of changing the locks were justified for various reasons including based on the Tenant abandoning the rental unit, I find it important to note that she provided contradictory testimony regarding if the Tenant abandoned her property or not, and if the Tenant continued to reside in the rental unit or not. Based on the email dated February 15, 2023, that was submitted by the Landlord as documentary evidence, it is clearly evident that R.H. was aware that the Tenant was still somehow occupying the rental unit, despite her efforts of changing the locks on February 12, 2023.

In addition, I also note that R.H. provided contradictory testimony regarding whether or not she accessed the rental unit to determine if the Tenant did leave her property in there. This was especially evident when she was questioned how she was able to show, and then re-rent the unit, if she did not ever access it.

Considered in its totality, given the contradictory, inconsistent, and shifting nature of R.H.'s testimony, I found the majority of her testimony to be intentionally untruthful. As such, I am satisfied that her credibility was sorely lacking. As she was clearly aware that the Tenant was overholding and still occupying the rental unit, I am satisfied that she changed the locks illegally, in contravention of the *Act* in an effort to displace the Tenant. Moreover, by doing so, she was in essence also attempting to prevent the Tenant from accessing her personal property.

While it is not lost on me that the Tenant, more likely than not, is in arrears for rent, and that the tenancy could have ended by way of an Order of Possession for non-payment

of rent, or even an Order of Possession based on the mutual agreement, the fact remains that R.H. never applied for an Order of Possession on either of these grounds and instead, elected to change the locks in an attempt to prevent the Tenant from accessing the rental unit. I do not accept that R.H. was not aware that this action was not appropriate to do, and based on the evidence presented, I am satisfied that this was done intentionally, with malice. Again, while I have no doubt that the Tenant's conduct and behaviour would have likely resulted in this tenancy coming to an end regardless, the most salient point here that I must consider is that R.H. was not permitted to arbitrarily change the locks on a whim.

Given that R.H. was clearly negligent here, R.H. and the Landlord are cautioned about engaging in, and exercising further inexcusable breaches of the *Act*. They are warned that the Compliance and Enforcement Unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the *Act*. This unit has the sole authority to determine whether to proceed with a further investigation into repeated matters of contraventions of the *Act*, and the sole authority to determine whether administrative penalties are warranted in certain circumstances. The Tenant has been reminded that she can contact the Residential Tenancy Branch to inquire about initiating an investigation by the Compliance and Enforcement Unit should she believe that the R.H. and the Landlord are intentionally attempting to circumvent the *Act*.

As I am satisfied that R.H. intentionally, unilaterally, and illegally attempted to prevent the Tenant from occupying the rental unit, an Order of Possession would ordinarily be granted to the Tenant. However, in this instance, as the Landlord has allegedly rented the unit to another party, the *Act* does not permit me to end this other tenancy and provide the rental unit back to the Tenant.

Regardless, as R.H. evidently took it upon her own volition to contravene the *Act* by attempting to seize the rental unit and prevent access to the Tenant's property without first obtaining an Order of Possession, the Landlord is cautioned that the Tenant may apply for, and be awarded, monetary compensation suffered as a result of being denied occupancy of the rental unit illegally. The parties should also be aware that the Landlord may also apply against the Tenant for any monetary compensation owed as a result of this tenancy.

In addition, the parties are advised that as this Decision establishes that this tenancy has now been determined to have ended, the security deposit must be dealt with in

accordance with the *Act*. Furthermore, I Order the Landlord to return the Tenant's property immediately.

### Conclusion

While the Tenant was ultimately successful in this Application, an Order of Possession cannot be granted to the Tenant as the Landlord has rented the unit to another party already.

However, I **Order** the Landlord to return the Tenant's property immediately.

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 21, 2023

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Residential Tenancy Branch