



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      LRE, LAT, OLC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order limiting or setting conditions on the landlords' right to enter the rental unit; an order permitting the tenants to change the locks to the rental unit; an order that the landlords comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

Both tenants and both landlords attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the tenants established that the landlords' right to enter the rental unit should be suspended or allowed conditionally?
- Have the tenants established that the tenants should be permitted to change the locks to the rental unit?
- Have the tenants established that the landlords should be ordered to comply with the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically to provide the tenants with proper notice to enter?

### Background and Evidence

**The first tenant** (BP) testified that this month-to-month tenancy began on November 1, 2019 and the tenants still reside in the rental unit. Rent in the amount of \$1,400.00 was

originally payable on the 1<sup>st</sup> day of each month, which has been increased, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$700.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is one of 3 double wide mobile homes on the landlord's property, including the landlords' home and another home which is also tenanted. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that numerous times notice to enter was not provided by the landlords which resulted in altercation that required police involvement. The tenants ask only for notice. It has improved significantly now, however the tenant was being threatened eviction, with things said about the tenant in front of the tenant's kids. The tenant opened the door a tiny sliver and asked the landlord to stop. The tenant put a note on the door saying that no notice was given, but the landlord opened the door, and said the tenant was ridiculous, pathetic, and took note off the door. The tenant told the landlord she had to follow the *Residential Tenancy Act*, and the landlord responded that the tenant didn't understand how it works and she would have this hearing moved forward and the tenants would be "out of here," and that the tenants' entire claim was pathetic. It became concerning for the tenant's safety at that point.

Prior to serving the landlords with notice of this hearing, they demanded that the tenants owed a deposit and said they were coming to do a pet inspection and to collect a pet deposit. They had given notice at that point. The tenants had requested repairs to the oven door and gutters.

In October, prior to filing, the landlords emailed saying they would start doing work. The tenant heard rumbling while sleeping, and the family was asleep. The tenants found the landlords on the roof who said they sent an email. The tenant's husband got an email saying they might start work, but it didn't indicate when.

In December the landlords sent an email saying that roofers would arrive, which was the tenants' daughter's birthday, so the tenants moved the birthday to the following weekend, then the landlords said they couldn't attend. They showed up the following weekend, but couldn't figure out which keys unlocked the door and emailed asking if someone would let them in. Then they emailed saying they would collect keys to make a copy for themselves, by 2:00 p.m. and would return the tenant's key later in the day. The landlords posted notices to the door demanding a copy of the key. The tenant replied that the locks had not been changed and refused to give her key. The landlords found the key, but had sent several emails to the tenants about it.

The landlords feel that they can shout at the tenant, but don't do that in front of the tenant's husband, and the tenant feels threatened when her husband is not there. The landlords treat the tenant differently when others are present, such as a friend. The tenant seeks an order that the landlords' right to enter be limited to when the tenant's husband is home.

The pet damage deposit was included in the security deposit because the tenants had cats.

The tenant does not know if the landlords have entered when the tenants are not there, however both locks are broken.

The tenants also seek an order that the landlords comply with the *Act* by giving proper notice before entering.

The landlords have included evidence that is misleading. It stems into being evicted due to cats, parking and a deepfreeze in the carport. The tenants want quiet enjoyment without being threatened consistently. Rather than argue, the tenant filed this application. The tenants have been compliant.

**The second tenant** (LP) testified that mainly the tenants would like to change the locks to give more separation between the landlords and the tenants.

The tenant has had to take considerable time off work when the landlords want to enter because the tenant's wife feels completely unsafe. The tenant was on the phone with his wife when the landlord tried to force her way in. Changing the locks would give the tenant's wife some sense of security.

The tenants are trying to follow rules and regulations, and the landlords may enter, however based on interactions, the landlords believe it is their right to enter. They also think that email or text is proper notice, but it is not.

**The first landlord** (CB) testified that she has been posting notices on the door since there have been issues. The parties were friends and texted regularly. On or about October 8, 2022 the landlord posted a notice stating that the landlords would enter on October 12, 2022 at 10:00 a.m. for the purpose of inspecting, and a copy has been provided for this hearing. On October 12 the tenant husband let the landlords in, and the tenant wife arrived while the landlords were there.

The landlord further testified that the rental property was purchased in February, 2020 and the tenants were already there. The tenants got a puppy, which was not there prior. The landlord requested half the rent at that time, \$710.00 for a pet deposit, by

email. The tenant didn't respond, so the landlord asked if she was okay. The tenant said she had already paid a pet deposit, so the landlord sent a copy of the tenancy agreement by email. The tenant's written response has been provided for this hearing. Once the tenant stopped responding, the landlord gave a notice to inspect.

The tenants gave a request for repairs on October 12, 2022, so the landlord was trying to assess what needed to be done, and sent an email to the tenants. The landlord did not think it was inappropriate to be outside on the roof with a battery operated roof blower, and clearing took about 5 minutes. The tenant came out upset, and the landlord was confused. The landlord asked how the tenant wanted notices to be served, and the tenant said to only talk to her husband. The next 2 notices were to the husband. The landlord was trying to follow the tenant's lead.

The landlord has never entered without notice or being let in by the tenants.

**The second landlord** (TW) testified that the rental home is a bungalow, not a mobile home.

The tenant wife's behaviour troubles the landlord most. The tenant writes and tells people that the landlord pushed the way in. However, the landlord is on long term disability due to severity of a condition, and that has upset the landlord.

The landlord knocked on the door a couple of times. The landlord gave notice that he wanted the tenant's key to make a copy. The tenant eventually opened the door, yelled, screamed and called police, but the landlord never tried to force a way in.

The landlords' insurance company requires that the landlords have a key due to possible emergencies.

The dispute started because the landlords asked for a pet deposit. The landlords now know that the tenants have 4 pets and 2 very large aquariums. In the summer of 2022 the tenants got a dog, but the landlord did not know that the tenants had previous pets. There are problems that the tenants never told the landlords about, which were only found when the landlords inspected.

### Analysis

Firstly, with respect to the tenants' application for an order limiting or setting conditions on the landlords' right to enter the rental unit, the *Residential Tenancy Act* protects a tenant's right to quiet enjoyment:

## **Protection of tenant's right to quiet enjoyment**

**28** 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.

## **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.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The law also states that notices or documents given by posting to the door of a rental unit are deemed to have been served 3 days later, unless earlier received. Therefore, to give 24 hours written notice to enter, a landlord would serve such a notice 4 days prior to entering. I am not satisfied that the landlords had any right to be on the roof of the tenants' home while the family was sleeping, even if the landlords had sent an email to the tenants. A notice to enter may not be served by email or text message unless the tenants had expressly authorized service of documents in that manner. I am not satisfied that the landlords' right to enter should be suspended or allowed conditionally, but I am satisfied that the landlords should be ordered to comply with the *Act* with respect to notice to enter. Therefore, I order that the landlords' right to enter should be ordered as per the *Act* as set out above, and I so order.

With respect to the tenants' application for an order permitting the tenants to change the locks to the rental unit, that is a very serious matter. It is important that a landlord have keys to rental units for emergencies, and to restrict that requires a severe breach by landlord, not a dislike for the landlord. I accept the testimony that the landlords treat the tenant wife differently when others are present, but I do not accept that the tenants should be permitted to change the locks, and I dismiss that portion of the application.

I have reviewed all of the evidence, including photographs. In particular a letter was addressed to the tenants from the landlords dated November 5, 2022 stating that access was required on November 11 at 2:00 p.m. for a number of repairs. It also states that photographs of the ceiling damages constitutes an emergency assessment and repair. I also note from the evidence that the landlords insisted that the tenants give their keys to the landlords for copying, but the landlords had the keys all along and were not able to locate them for a time. I also note a condition inspection report with the Move-in portion completed dated October 12, 2022 which contains notations including dirty walls and trim, dirty windows, coverings, screens and electrical outlets. I find that to be intrusive considering that the tenants had been living in the rental unit since before the landlords purchased it. I accept that the form of the report was used as a matter of convenience, however the nature of housecleaning during a tenancy is really not the concern of the landlord, unless it affects other occupants.

A landlord may enter a rental property to post or serve notices, and may inspect a rental unit monthly. However, a landlord may not serve a notice to enter by email or text message.

In the circumstances, I order that the landlords comply with Sections 28 and 29 as set out above, and that any notices to enter be served in accordance with Section 88:

### **How to give or serve documents generally**

**88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service provided for in the regulations.

Since the tenants have been partially successful with the application the tenants are also entitled to recover the \$100.00 filing fee from the landlords. I grant a monetary order in favour of the tenants as against the landlords in that amount and I order that the tenants be permitted to reduce rent for a future month by that amount, or may serve the order on the landlords and file the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

### Conclusion

For the reasons set out above, the tenants' application for an order suspending or setting conditions on the landlords' right to enter the rental unit is hereby dismissed without leave to reapply.

The tenants' application for an order permitting the tenants to change the locks to the rental unit is hereby dismissed without leave to reapply.

I hereby order the landlords to comply with Sections 28 and 29 and 88 as set out above respecting entering on the rental property.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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 1, 2023

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Residential Tenancy Branch