



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

OPC, CNC, OPR, CNR, RP, OLC, MT, PSF, LRE, OPT, AAT, and FF

### Introduction

This hearing dealt with cross applications between the parties.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Cause; an Order of Possession for Unpaid Rent; and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Cause; to set aside a Notice to End Tenancy for Unpaid Rent; for more time to apply to set aside a Notice to End Tenancy; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*; for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlord to provide services or facilities; for an Order suspending or setting conditions on the Landlord's right to enter the rental unit; for an Order of Possession for the rental unit; for authorization to access the rental unit; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

### Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to an Order of Possession for Cause or an Order of Possession for Unpaid Rent and whether the Landlord is entitled to recover the fee for filing the Application for Dispute Resolution, pursuant to sections 55 and 72 of the *Residential Tenancy Act (Act)*.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution are whether the Notice to End Tenancy for Cause and/or the Notice to End Tenancy for Unpaid Rent should be set aside; whether the Tenant should be granted for more time more time to apply to set aside a Notice to End Tenancy; whether there is a need for an Order requiring the Landlord to comply with the Act; whether there is a need for an Order requiring the Landlord to make repairs to the rental unit; whether there is a need for an Order requiring the Landlord to provide services or facilities; whether there is a need for an Order suspending or setting conditions on the Landlord's right to enter the rental unit; whether the Tenant is entitled to an Order of Possession for the rental unit; whether there is a need for an Order authorizing the Tenant to access the rental unit; and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

### Background and Evidence

The Landlord submitted a tenancy agreement that was signed by both parties on October 13, 2009. The agreement indicates that this tenancy began on October 25, 2009 and that the Tenant is required to pay monthly rent of \$1,950.00 on the first day of each month.

Both parties submitted a copy of a Ten Day Notice to End Tenancy for Unpaid Rent, which is signed by the Landlord and dated November 09, 2009. The Notice to End Tenancy for Unpaid Rent declared that the Tenant must vacate the rental unit in November of 2009, but it does not state a specific day in November.

The Landlord submitted a copy of a Notice to Vacate Premises which is in a format that is not approved by the Residential Tenancy Branch. The Tenant submitted a copy of an Eviction Notice which is in a format that is not approved by the Residential Tenancy Branch. Both Notices are signed by the Landlord, dated November 09, 2009, and advise that the Tenant that she must vacate the rental unit. The Landlord acknowledged that he did not serve the Tenant with a One Month Notice to End Tenancy for Cause on the form that is generated by the Residential Tenancy Branch.

The Tenant stated that she returned to her rental unit on November 16, 2009 or November 17, 2009 and discovered that the fob that allowed her to use the elevator to access her rental unit had been deactivated. She stated that the concierge told her that she was being evicted and he would not allow her access to the elevator. She stated that the Landlord was in the lobby of the residential complex but he refused to make eye contact with her. She stated that she contacted the police but they would not assist her as they deemed the matter to be a civil dispute.

The Landlord stated he did not change the locks to the rental unit and that the Tenant normally left her rental unit insecure. The Landlord denied deactivating the Tenant's access fob; he denied asking the concierge to deactivate the access fob; and he denied

being in the lobby on the day the fob was deactivated. He stated that the concierge advised him that the Tenant had lost her keys and access fob on two occasions and that the concierge advised him that he had deactivated the access fob after he observed "strangers" using it to access the elevator.

The Tenant stated that she has never lost her keys or her fob and that she is still in possession of the access fob, although it does not provide her access to the elevator. She stated that the concierge had previously warned her that the access fob would be deactivated because the Landlord was attempting to end the tenancy.

The Tenant is seeking an Order requiring the Landlord to ensure that her access fob is reactivated, as this fob provides her access to the elevator as well as an adjoining building which houses recreational facilities.

The Tenant is seeking an Order requiring the Landlord to reconnect her intercom. The Tenant stated that her intercom stopped working on, or about November 12, 2009. She stated that the concierge advised her that the intercom had been deactivated at the direction of the Landlord. The Landlord denied directing the concierge to deactivate the intercom and stated that he was not aware that the intercom was not working.

The Tenant is seeking an Order that restricts or sets conditions on the Landlord's right to enter the rental unit, because she believes that the Landlord has entered the rental unit without proper notice and/or authority. The Landlord admitted to being in the rental unit on one occasion during this tenancy, in the company of the police, when the police were asked by the concierge to remove one of the Tenant's guests. The parties agree that the police entered the rental unit and removed one of her guests on the same day that the access fob was deactivated.

The Tenant is seeking an Order requiring the Landlord to repair the hardwood floor in the front entry of the rental unit, which has lifted since this tenancy began. She stated that she did not advise the Landlord of the damage to the floor prior to filing her Application for Dispute Resolution as she only noticed the damage a few days prior to her access fob being deactivated.

### Analysis

The undisputed evidence is that these parties entered into a tenancy that began on October 25, 2009, which required the Tenant to pay monthly rent of \$1,950.00.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the rent is due by giving a notice to end tenancy. The undisputed evidence is that the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent that did not declare the day in November of 2009 on which the Tenant must vacate the rental unit.

Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*. Section 52(c) of the *Act* stipulates that to be effective a notice to end tenancy must “state the effective day of the notice”.

In the circumstances before me I find that the Ten Day Notice to End Tenancy for Unpaid Rent did not state the effective date of the Notice. I therefore find that the Notice was not effective, as the Landlord did not comply with section 52(c) of the *Act*. On this basis, I dismiss the Landlord’s application for an Order of Possession and I grant the Tenant’s request to set aside the Ten Day Notice to End Tenancy for Unpaid Rent.

Section 47 of the *Act* outlines a variety of reasons why a Landlord can end a tenancy for “cause”. Section 47(3) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*. Section 52(e) of the *Act* stipulates that to be effective a notice to end tenancy must, when given by the Landlord, must be in the approved form

The undisputed evidence is that the Landlord did not serve the Tenant with a One Month Notice to End Tenancy for Cause on a form that was generated by the Residential Tenancy Branch, which is the approved form for serving notice pursuant to section 47 of the *Act*. As the Landlord did not serve notice to end the tenancy on the approved form, I find that he did not comply with section 52(e) of the *Act* and I therefore find that he has not served the Tenant with proper notice of his intent to end this tenancy pursuant to section 47 of the *Act*.

I find that the notices to end tenancy that were served in a format that that was not approved by the Residential Tenancy Branch are of no force and effect, as they do not comply with section 52(c) of the *Act*. On this basis, I dismiss the Landlord’s application for an Order of Possession for Cause and I grant the Tenant’s request to set aside the Notice to End Tenancy for Cause.

The evidence shows that the Tenant is unable to access the rental unit, which is on the twelfth floor, because the fob that provides her with access to the residential complex and the elevator has been deactivated. I find that this access fob is integral to this tenancy and I find that the Landlord has an obligation to ensure that this fob is reactivated. On this basis, I hereby Order the Landlord to ensure that the access fob is reactivated immediately. In the event that the access fob is not reactivated prior to December 04, 2009, I hereby authorize the Tenant to reduce her next rent payment, or any subsequent rent payments, by \$50.00 per day until such time as the access fob is reactivated.

I find that an intercom is a service that was provided to the Tenant as part of her tenancy agreement and that it is a service that is integral to this tenancy, as the rental unit is on the twelfth floor of the residential complex. On this basis, I hereby Order the Landlord to take steps to ensure that the intercom in the rental unit is repaired immediately. In the event that the intercom is not repaired prior to December 31, 2009, I hereby Order that the Tenant can reduce her next rent payment, or any subsequent rent payments, by

\$10.00 per day until such time as the intercom is functional.

Section 29(1)(f) stipulates that a landlord may enter a rental unit if an emergency exists and the entry is necessary to protect life or property. I find that the Landlord did not need to access the rental unit with the police on the day the access fob was deactivated as there is insufficient evidence to establish that an emergency existed or that the Tenant's guest posed a threat to life or property.

As the Landlord has entered the rental unit without proper authority, I hereby Order that the Landlord may only access the rental unit under the following conditions:

- at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that advises her of the purpose for entering, which must be reasonable, and which specifies the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- the landlord has an order of the director authorizing the entry;
- a **bonafide** emergency exists and the entry is necessary to protect life or property, which does not include ascertaining the identity of a person in the rental unit unless a police officer has reasonable and probable grounds to believe that the person in the rental unit does not have permission **from the Tenant** to be in the rental unit.

I decline the Tenant's application for an Order requiring the Landlord to repair the floor, as I find that her application is premature. I find that the Tenant has an obligation to advise the Landlord of the nature of the damage to the floor and to provide him with an opportunity to determine the cause of the damage and to determine whether the problem and to repair the problem if he deems it necessary. The Tenant retains the right to file another Application for Dispute Resolution seeking an order for these repairs if, after proper notification, the Landlord has not complied with this obligation to maintain the residential property in a state of decoration and repair that complies with the legislation and the tenancy agreement. Both parties are hereby advised that the Tenant is responsible for repairing any damage to the rental unit that is caused by the actions or neglect of the Tenant or her guest.

### Conclusion

As this tenancy has not been ended in accordance with the legislation, I find that this tenancy shall continue until it is ended in accordance with the *Act*. As this tenancy has not been ended and the Tenant wishes to continue to reside in the rental unit, I hereby Order the Landlord to take every reasonable step to ensure that the Tenant's right to access the rental unit is not restricted. I also grant the Tenant's request for an Order of Possession that is effective immediately upon service to the Landlord. In the event that the Landlord does not facilitate the Tenant's access to this rental unit, this Order may be

served on the Landlord, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

In the event that the locks to the front door of the rental unit have been changed and The Landlord has not provided the Tenant with a key to the front door of the rental unit, I hereby give the Tenant authority to change the lock(s) on the front door and to reduce her next rent payment, or any subsequent rent payments, by the amount she paid to have the lock(s) changed. The Tenant only has the authority to reduce her rent payment by the amount noted on the receipt from a bonafide locksmith and she must not reduce her rent payment until such time as she has provided the Landlord with a copy of that receipt. In the event that the Tenant changes the lock to the rental unit, I hereby Order her to provide the Landlord with a key to that lock within seven days.

As the Landlord's Application for Dispute Resolution has been without merit, I hereby dismiss the Landlord's application to recover the cost of filing an Application for Dispute Resolution.

As the Tenant's Application for Dispute Resolution has merit, I find that the Tenant is entitled to \$50.00 in compensation for the filing fee paid by the Tenant for this application. I hereby authorize the Tenant to reduce her next monthly rent payment by \$50.00, as compensation for the filing fee paid by the Tenant for this Application.

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 03, 2009.

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Dispute Resolution Officer