



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      LRE, O OLC

### Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order suspending or setting conditions on the landlord's right to enter the rental unit.
- b. An order that the landlord comply with the Act, regulation and/or the tenancy agreement.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was sufficiently served on the landlord.

### Preliminary Issue:

The landlord raised the issue as to whether the Residential Tenancy Act applies. Section 4 of the Act provides as follows:

What this Act does not apply to

4 This Act does not apply to

...

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

I accept the evidence of the Tenant that at the time he entered into a tenancy agreement the landlord was not living in the rental unit and he was not sharing the bathroom or kitchen facilities with the landlord. The rental property has 5 rooms. The

tenant has rented one of the rooms. Since the start of the tenancy two rooms have become vacant and the landlord has moved some her belongings into one of the rooms and lives there part time. I determined the landlord's decision to move into one of the rooms does not have the effect of ousting the jurisdiction of the Residential Tenancy Act;. I determined that a landlord cannot avoid the rights and obligations previously given to a Tenant by moving into one of the rooms in the rental property. To rule otherwise would allow a landlord to unilaterally reduce contractual and statutory rights given to a Tenant. As a result I determined the Residential Tenancy Act applies and that an arbitrator has jurisdiction to hear this dispute.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit.
- b. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement.

Background and Evidence:

The tenant testified the tenancy commenced on March 31, 2016. The rent is \$650 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$300 at the start of the tenancy.

There has been an ongoing dispute between the landlord and the Tenant as to the landlord's access to the rental property. I determined that while a landlord cannot oust the jurisdiction of the Residential Tenancy Act by moving into a room in the rental property, the Act does not prevent a landlord from moving into a vacant room in the rental property.

Settlement:

Section 63 of the Residential Tenancy Act provides as follows:

Opportunity to settle dispute

63 (1) The director may assist the parties, or offer the parties an opportunity, to settle their dispute.

(2) If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.

At the end of the hearing the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) of the Residential Tenancy Act as follows:

- a. The parties mutually agree to end the tenancy on March 31, 2018.
- b. The parties request the arbitrator issue an Order of Possession for March 31, 2018.
- c. The parties acknowledge that the landlord has the right to live in one of the vacant rooms in the rental property but this does not remove the rights and obligations given under the Residential Tenancy Act.

Order for Possession:

As a result of the settlement I issued granted an Order of Possession effective March 31, 2018. All other claims in the Application for Dispute Resolution are dismissed.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

**This decision is final and binding on the parties.**

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: November 09, 2017

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Residential Tenancy Branch