



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GATEWAY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      LRE, MNDC, OLC

### Introduction

This hearing was scheduled to deal with the tenant's application to suspend or set conditions upon the landlord's right to enter the rental unit.

The tenants had also indicated they were seeking monetary compensation for stress and aggravation related to constant noise on the application but did not indicate an amount. The tenants then submitted an Amendment to indicate they were seeking compensation of \$3,000.00 for "stress and aggravation". The tenants filed another Amendment to request the landlord be ordered to stop permitting vehicles to park on the ramp.

Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed that the parties had exchanged their respective hearing documents and evidence upon each other. I also explained the hearing process to the parties and permitted the parties to ask questions about the process.

At the outset of the hearing, the tenants had a witness in attendance. I excluded the tenants' witness until such time called to testify. As seen below, the hearing dealt with only one issue and it was unnecessary to call the witness with respect to the issue addressed during the hearing.

The hearing lasted over one hour and in that time the only issue that was sufficiently heard was with respect to the landlord's right to enter the rental unit. I severed the tenants' application to deal with the issue that was sufficiently set out on the original application (landlord's right to enter the rental unit) as the hearing time was

limited and the tenants raised three unrelated issues. Rule 2.3 and Rule 6.2 of the Rules of Procedure me the discretion to sever issues that are not sufficiently related. Rules 2.3 and 6.2 provide:

**2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

**6.2 What will be considered at a dispute resolution hearing**

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

As the parties were informed, the tenants remain at liberty to file another Application for Dispute Resolution to seek remedy with respect to the issues not dealt with by way of this proceeding. I strongly encouraged the parties to try to resolve their issues themselves before proceeding to make another Application.

Issue(s) to be Decided

Have the tenants established that the landlord's right to enter the rental unit should be suspended or conditions set upon that right?

Background and Evidence

I heard that this tenancy commenced in April of 2015 or 2016. The tenants are required to pay rent and parking in the sum of \$930.00 or \$940.00 on the first day of every month. The rental unit is described as an apartment style unit located on the corner of the top floor of the building. The resident manager resides in the unit directly below the tenants' unit.

The tenants seek an order for the landlord to comply with section 29 of the Act. The tenants seek this remedy because the tenant claims that the resident manager opened the door of the rental unit while the tenant was home sometime in 2016. The landlord was of the position that the landlord does comply with section 29 of the Act. The

resident manager testified that she accidentally inserted her unit key into the lock of the rental unit in 2016 when she mistook the rental unit for her own unit. The resident manager testified that her key did not unlock the rental unit door and it was the tenant that came and opened the door. The resident manager explained that she was tired and in a rush to enter her unit and that she apologized to the tenant for that incident.

The tenants also seek an order that would preclude the landlord or its contractors from entering their unit to perform work on the fascia board or removing debris through their unit. The tenants were of the position that the workman can access the balcony to do the fascia board cleaning and debris removal by way of a ladder rather than entering their rental unit. The tenants explained that the work on the fascia board directly outside of their unit has not yet started but they anticipate that it will be done in the near future. The landlord stated that the fascia board cleaning in front of the rental unit is expected to take place in the spring or summer months of 2019 and the landlord was agreeable that the workman shall access the fascia board and clean up any debris that falls on the tenants' balcony by way of a ladder to the tenants' balcony.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

The tenants seek orders with respect to the landlord's right to enter the rental unit. Section 29 of the Act provides for the landlord's restricted right to enter a rental unit. I have reproduced section 29 below for the parties' further reference:

- 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).

With respect to the incident that took place in 2016, the parties provided opposing testimony as to whether the resident manager actually opened the rental unit door and I find the opposing evidence is insufficient for me to conclude the landlord unlawfully entered the unit in 2016. Rather, I heard consistent testimony that the resident manager inserted a key into the rental unit lock and the resident manager explained to the tenant at the time that she mistook the rental unit door for her own unit. Given the amount of time that has passed since the incident in 2016 and no reports of any other attempts to enter the unit unlawfully I find an order for the landlord to comply with section 29 is not necessary. Although I have not issued an order for compliance, the landlord remains obligated to comply with section 29.

With respect to the tenants' request that the workman access the fascia board and balcony in front of their rental unit by way of a ladder and given the landlord's agreement to accommodate the tenants' request, I make their agreement an order of mine for added certainty. Accordingly, I order that when the landlord or its contractors perform work on the fascia board directly outside the tenants' unit, access to the fascia board and clean-up of any debris that may fall onto the tenants' balcony, shall be accomplished by way of a ladder.

As I informed the parties' during the hearing, the above order pertains to the fascia board and balcony directly outside the tenants' rental unit. Work that is done outside of other rental units is not subject to the above order.

Conclusion

I have issued an order to the landlord with respect to accessing the tenants' balcony to work on the fascia board outside of the subject rental unit. All other entry to the rental unit is to be accomplished in a manner that complies with section 29 of the Act.

The other issues raised by the tenants have been dismissed with 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: November 08, 2018

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Residential Tenancy Branch