



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR & FF

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This is a request to have a Section 46, 10 day Notice to End Tenancy for non-payment of rent cancelled.

### Background and Evidence

The applicant testified that:

- She was out of town when the March 2009 rent came due, and so she had \$1000.00 transfer from her account to her son's account.
- Her son subsequently withdrew \$780.00, put it in an envelope and put it through the mail slot into the drop box at the managers suite.
- She subsequently received a 10 day Notice to End Tenancy, which stated she had not paid the March 2009 rent.

- Rent has always been paid through that mail slot; however, before March 2009 there had not been a box on the back of the door and the mail would simply drop to the floor.
- It is her belief that by adding the small drop box directly behind the mail slot the landlords have made it so that someone with a small hand can reach through the mail slot and remove a rent payment, and, in an attempt to test this theory, she herself was able to put her hand through the mail slot into the drop box.

The tenant is therefore asking that the Notice to End Tenancy be cancelled.

The landlord testified that:

- He does not know when the drop box was added to the back of the door; however there have been no other reports of any rent payments being removed from the drop box.
- Both he and the other manager attempted to put their hands through the mail slot into the drop box and were unable to do so.
- It would take a very small hand to be able to reach through the mail slot into the drop box.

It is there for the landlord's position that the March 2009 rent is still outstanding.

## Analysis

When landlords set up a drop box for receiving rental payments the landlord must ensure that the box for receiving those payments is secure, and in this case it is my finding that the landlord has not done so.



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It's also my finding that the tenant has shown that it would be possible to reach through the mail slot into the drop box and thereby remove the contents of that box.

I accept the tenants claim that the rent was put through the mail slot, and therefore it is my decision that the rent has been paid. If that rent subsequently goes missing from the drop box, the landlords must bear that loss and cannot evict the tenant for non-payment of rent.

Therefore there is no rent outstanding at this time.

## Conclusion

I order that the section 46 Notice to End Tenancy, dated March 16, 2009, is cancelled and this tenancy continues.

I further Order, that the landlord bear the cost of the filing fee paid for this hearing. The tenant may therefore deduct \$50.00 from future rent payable to the landlord.

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: May 13, 2009.

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Dispute Resolution Officer