



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      PSF

### Introduction

This decision pertains to the Tenants' application for dispute resolution made on March 13, 2018, under the *Residential Tenancy Act* (the "Act"). The Tenants seek an order requiring the Landlord to comply with the Act, the regulations or a tenancy agreement.

The Tenant (K.) attended the hearing before me, and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Landlord did not attend.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issue of this application will be considered in my decision.

The Tenant testified that they served the Landlord with the Notice of Dispute Resolution Proceeding (the "Notice") on March 19, 2018, by leaving a copy in a mailbox at the Landlord's address of service. On April 3, 2018, the Tenants sent a second copy of the Notice by registered mail to the Landlord's address of service. The Tenant provided me with Canada Post Registered Mail tracking information confirming that it was sent.

I am satisfied that the Landlord was served pursuant to section 89 of the Act, and was deemed to be received on the fifth day after it was mailed, pursuant to section 90 of the Act.

## Issue

Are the Tenants entitled to an order requiring the Landlord to comply with the Act, the regulations or a tenancy agreement?

## Background and Evidence

The Tenant testified that the tenancy commenced November 1, 2014, for a one year fixed term, and is currently a month-to-month tenancy. The tenancy agreement (the "Agreement"), signed by all parties, stated that rent was \$1,450.00, due on the first of the month. The Tenants gave the Landlord a security and a pet damage deposit. The Tenant submitted into evidence a copy of the Agreement.

The Tenant referred me to page 2 of the Agreement, section 3 (b) ("What is included in the rent:"), and to the *Additional Information* box, in which the following items are included: "2 ACs. & Lawn mower." The Tenant testified that this meant that two air conditioner units and a lawn mower were to be provided as part of the Agreement.

The rental unit consists of a single-family dwelling with front and back lawns, and the Tenant testified that it was always the understanding of all parties that the Tenants were responsible for lawn maintenance.

Regarding the lawn mower, the Tenant testified that it is at least five years old, and that it had always worked throughout the tenancy. In November 2017, however, the mower stopped working. "It won't start," testified the Tenant.

The Tenant testified that despite twice asking the Landlord to fix the mower, the Landlord failed to do so. The Tenant submitted into evidence copies of e-mail correspondence between the Tenant and the Landlord regarding the mower. In an e-mail of October 31, 2017, the Landlord said to the Tenant, "You have rented the house. Maintenance of front and back of the property is your responsibility. So how you will do the maintenance of house and property you need to think over that, please."

The Tenant testified that, and again referring me to the correspondence, that they responded to the Landlord, reminding them that the lawn mower is listed in the Agreement. On November 1, 2017, the Landlord responded by e-mail, saying that the "lawn mower is not a part of the property like stove. Please go through the Rental agreement and you are free to consult the Tenancy Branch."

The Tenant also submitted into evidence a copy of an e-mail, dated February 1, 2018, requesting that the Landlord repair the lawn mower and a clothes dryer. According to the Tenant, the Landlord repaired the clothes dryer but not the lawn mower. Finally, the Tenant testified that they have had to borrow a family member's lawn mower in an effort to maintain the lawn.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

I will review the law as it relates to the issue. I will then apply the law to the facts of this case.

Section 27 (1) of the Act reads as follows:

27 (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

A "material term" is a term within a tenancy agreement that both parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Even if a service or facility is not essential to a tenant's use of the rental unit as living accommodation, provision of that service or facility may be a material term of the tenancy agreement. When considering if a term is a material term and goes to the root of the agreement, an arbitrator will consider the facts and circumstances surrounding the creation of the tenancy agreement. (See page 1 of Residential Tenancy Policy Guideline 22, *Termination or Restriction of a Service or Facility*.)

The Tenant testified that the term regarding the lawn mower was included in the Agreement because they were required to maintain the lawn. The Tenant's testimony, coupled with the e-mail correspondence submitted into evidence, confirms that there was an expectation between the parties that the Tenants would maintain the lawn. That the Tenants are responsible for mowing the lawn is also consistent with Residential Tenancy Policy Guideline 1, page 7: "tenants who live in a single-family dwelling are generally responsible for routine yard maintenance, including cutting grass."

The Tenants requested more than once that the Landlord fix the mower. The Landlord has refused to fix the lawn mower, or take any steps to do so. Indeed, by refusing to fix the lawn mower, the Landlord puts the Tenants in an untenable position of potentially breaching their obligations under the Agreement with respect to yard maintenance.

I therefore find, based on the unchallenged testimony and documentary evidence, that the provision of a working, operable lawn mower as part of the tenancy is a material term of the Agreement. Further, I find that the Landlord has breached section 27 (1) of the Act by terminating a service or facility that is a material term of the Agreement. Section 62 (3) of the Act permits an arbitrator to make any order necessary to give effect to the rights, obligations and prohibitions under the Act, including an order that a landlord or tenant comply with the Act, the regulations or a tenancy agreement and an order that the Act applies.

I hereby order the Landlord to comply with the Act and the Agreement by repairing the lawn mower. The repair to the lawn mower must occur no later than Monday, May 14, 2018.

#### Conclusion

**I hereby order the Landlord to comply with the Act and the Agreement by repairing the lawn mower. The repair to the lawn mower must occur no later than Monday, May 14, 2018.**

**If the Landlord fails to perform this repair, the Tenants may make an application for an order allowing them to reduce their rent until the repair is completed, and to not have to perform lawn maintenance any longer.**

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 4, 2018

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Residential Tenancy Branch