



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

DRI, OLC, PSF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied to dispute a rent increase; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and for an Order requiring the Landlord to provide services or facilities.

The Tenant stated that on March 22, 2019 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted as evidence to the Residential Tenancy Branch on were sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenant cited a tracking number that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Landlord did not appear at the hearing.

As the aforementioned documents were served to the Landlord, the evidence was accepted as evidence for these proceedings and the hearing proceeded in the absence of the Landlord.

Issue(s) to be Decided:

Has there been a rent increase that does not comply with the *Act*?

Does the Landlord have the right to charge the Tenant for hydro?

Is there a need to issue an Order requiring the Landlord to repair the Tenant's mailbox?

Background and Evidence:

The Tenant stated that:

- he moved into the rental unit on October 01, 2009;
- he signed a new tenancy agreement, effective August 31, 2011, when the rental unit was sold to his current Landlord;
- he currently pays rent of \$470.00;
- rent is due by the first day of each month;
- on January 07, 2019 the Landlord served the Tenant with written notice that his rent was going to increase by \$30.00, effective April 01, 2019;
- he did not agree to pay a rent increase of \$30.00;
- prior to January 07, 2019 heat and hydro were provided to the Tenant as part of the tenancy, at no additional cost;
- on January 07, 2019 the Landlord served the Tenant with notice that he had to pay \$50.00 per month for hydro;
- he did not agree to pay the additional \$50.00 per month;
- Canada Post has previously delivered mail to this address;
- Canada Post has stopped delivering mail to this address as the mail boxes cannot be properly secured; and
- the Landlord has promised to secure the mail boxes, but has not yet done so.

The Tenant has applied to set aside the proposed rent increase and the proposed hydro fee. The Tenant is also seeking an Order requiring the Landlord to repair the mail boxes.

Analysis:

Section 43(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a landlord may impose a rent increase up to the amount calculated in accordance with the *Residential Tenancy Regulations*. The allowable rent increase calculated in accordance with the *Residential Tenancy Regulations* for 2019 is 2.5%. As the proposed rent increase of \$30.00 per month is more than the allowable rent increase for 2.5%, I find that the rent increase does not comply with section 43(1)(a) of the *Act*.

Section 43(1)(b) of the *Act* stipulates that a landlord may impose a rent increase up to the amount ordered by the director of the Residential Tenancy Branch. As there is no evidence the director order a rent increase in any amount, I find that the proposed rent increase does not comply with section 43(1)(b) of the *Act*.

Section 43(1)(c) of the *Act* stipulates that a landlord may impose a rent increase up to the amount agreed to by the tenant in writing. As there is no evidence the Tenant agreed to a rent increase of \$30.00, I find that the proposed rent increase does not comply with section 43(1)(c) of the *Act*.

As the proposed rent increase of \$30.00 does not comply with section 43(1) of the *Act*, I set aside this proposed rent increase and find that the rent remains at \$470.00.

Section 1 of the *Act* defines “rent” as money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include a security deposit, a pet damage deposit, or a fee prescribed under section 97 (2) (k) of the *Act*. The definition of “services and facilities” in the *Act* includes utilities.

I find that when utilities are provided as a service with the tenancy and there is not a separate charge for utilities, any payment made for utilities is to be considered rent.

On the basis of the undisputed evidence I find that hydro was provided to the Tenant with the tenancy; that it was included in the rent; and that he did not pay a separate fee for hydro. I therefore find that the Landlord’s attempt to charge the Tenant a \$50.00 fee for hydro constitutes a rent increase that does not comply with section 43(1) of the *Act*. I therefore find that the Tenant is not obligated to pay a \$50.00 fee for hydro and I find that the rent remains at \$470.00.

On the basis of the undisputed evidence I find that when this tenancy began the Tenant was provided with a post box that was suitable for mail delivery and that Canada Post will no longer deliver to that post box as it can no longer be secured. As this was a service that was previously provided to the Tenant as a term of the tenancy agreement, I find that the Landlord must continue to provide that service as a term of the tenancy. I therefore Order, pursuant to section 62(3) of the *Act*, that the Landlord repair the Tenant’s mail box in a manner that satisfies the requirements of Canada Post. I Order that the Landlord complete this repair no later than June 30, 2019.

Conclusion:

The proposed rent increase and hydro fee are set aside.

The Landlord must provide the Tenant with a mail box that satisfies the requirements of

Canada Post, no later than June 30, 2019

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, 2019

Residential Tenancy Branch