



# 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 dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order to dispute a rental increase pursuant to section 41;
- An order requiring the landlord to comply with the *Act*, regulations, and/or tenancy agreement pursuant to section 62;
- An order requiring the landlord to provide services or facilities as required by the tenancy agreement or the *Act* pursuant to section 27 and 62;

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. The tenant acknowledged receipt of the landlord's materials. Neither party raised issues of service. I find the tenant served the landlord in accordance with section 89 of the *Act*.

### **Issue(s) to be Decided**

Is the tenant entitled to the following:

- An order to dispute a rental increase pursuant to section 41;

- An order requiring the landlord to comply with the *Act*, regulations, and/or tenancy agreement pursuant to section 62;
- An order requiring the landlord to provide services or facilities as required by the tenancy agreement or the *Act* pursuant to section 27 and 62;

### Background and Evidence

The parties agreed the month-to-month tenancy began on August 1, 2017 for monthly rent of \$1,300.00 payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$650.00 which the landlord holds. A copy of the Agreement was not submitted.

### *Notice of Rent Increase*

On July 31, 2019 the landlord personally served the tenant with a Notice of Rent Increase in an RTB form, a copy of which was submitted. The Notice stated that effective November 1, 2019 the tenant's rent would increase by \$200.00 monthly "due to increase in hydro bill" for a total monthly rent of \$1,500.00.

### *Mail*

The tenant explained that the unit is a basement suite. The landlord lives upstairs. The parties have the same street address. There is one mailbox for both the landlord and the tenant which is locked. The landlord holds the only key.

The parties initially agreed that the landlord would collect the mail in a single mailbox for the building. The landlord would then give the tenant her mail.

The tenant stated that she expected to receive her mail promptly after delivery. Instead, there have been delays between the delivery to the building and the tenant's receipt of her mail which she finds unacceptable.

The tenant testified that the collection of her mail has been a major problem and significant irritant in the tenancy throughout the tenancy, worsening as time passed.

To illustrate the difficulties, the tenant submitted copies of many text exchanges between the parties. The following are examples:

*Landlord: you have a mail pick it up at 6:30 pm if you don't come I will leave it at my door and you can pick it from there*

*Tenant: I just went to your door & didn't see any mail. Did u put it my mail outside your door?*

*Landlord: you have a mail come get it in 10 minutes I am leaving in 10 minutes so come I will come late in night*

*Tenant: I just got out of the shower....*

*Landlord: too bad I am home at 4:05 PM n make sure you come get it.*

*Tenant: too bad what? And stop telling me when I need to come get my mail. Give me my own damn mail key to get my OWN mail.*

*Landlord: [i] will leave your mail outside my front door.*

*Tenant: I have told many times, I don't want my mail left outside! I don't understand what I will come & go back is supposed to men. U said I can come get mail when u get home so what time will u be home.*

*Landlord: it's outside on the table under the plastic bag.*

*Tenant: And I have told u so many times over & over NOT to do that! I don't want u putting our mail outside EVER! I don't give a shit if your friggin going out. Why do uy put our mail outside cuz u go out? DON'T. [repeated request for key]*

*Landlord: I was very sick n stayed home in bed whole week therefore I didn't checked the mail I have checked now n you have 2 mails come n get it ...*

The tenant stated that she attempted to resolve the problem with the landlord. The tenant's testimony, as illustrated by the texts, is that she repeatedly asked that her mail not be left outside, a request which is ignored by the landlord. She objected to the delay in receipt of her mail; as illustrated above, the landlord does not always check the mail daily. The tenant informed the landlord she objected to not knowing when she can collect her mail and to the method of delivery (leaving on a patio table) which she viewed as unsafe and lacking in privacy.

The tenant requested a key to the mailbox. This would allow her to get her own mail when she wanted.

The landlord refused to provide the tenant with a copy of the key. He testified that he

gave a copy of a key to a previous tenant and it did not work out.

The landlord did not assert that the tenant was dishonest or untrustworthy. Nevertheless, the landlord was adamant he would never provide her with the key.

The parties accuse each other of being unreasonable and uncooperative.

### Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

#### *Rent increase*

Rent increases are governed by Part 3 of the Act. Pursuant to section 41, a landlord must not increase rent except in accordance with Part 3. Section 43 provides that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by the director on an application under subsection (3) or agreed to by the tenant in writing.

The allowable percentage for 2019 is 2.5%.

As the Notice issued by the landlord is not in compliance with Part 3 as the proposed rent increase is greater than allowed, it is of no force or effect. The Notice is set aside, and the rent remains unchanged at \$1,300.00 monthly.

#### *Mailbox*

I accept the tenant's testimony as supported by the documents that she had a reasonable expectation based on her agreement with the landlord at the beginning of the tenancy that she would receive delivery of her mail in an expeditious manner. Instead, the tenant has testified to unnecessary difficulty arranging simple, prompt, private, safe, secure collection of her mail.

I have considered *Residential Tenancy Branch Policy Guidelines No. 1* which states:

*The landlord must give each tenant at least one set of keys for the rental unit, main doors, mail box and any other common areas under the landlord's control, such as recreational or laundry rooms.*

I accept her version of events that she has repeatedly asked to have a key to the mailbox; I find the request reasonable. I accept the tenant's evidence, as supported by the copies of the texts, that the landlord repeatedly denied this sensible request for reasons that are not valid or clear.

During the hearing, I found the landlord to be obstreperous, unreasonable and unwilling to find a mutually acceptable solution. I further find the landlord has no clear or valid reason for the denial of access by the tenant to the mailbox.

In contrast, I find the tenant's testimony to be clear, consistent, reasonable and believable. I give considerable weight to her testimony and prefer her version of the unnecessary and increasing problems she encountered in getting her mail. In short, I find that the landlord has not met the agreement between the parties that he would expeditiously give the tenant her mail in a trouble-free manner.

I have considered section 27 of the Act which states:

- 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*.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
  - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

In section 62, the Arbitrator has authority as follows:

- 62 (1)** The director has authority to determine
- (a) disputes in relation to which the director has accepted an application for

dispute resolution, and

(b) any matters related to that dispute that arise under this Act or a tenancy agreement.

(2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

(3) *The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.*

In considering the above sections and whether the expeditious delivery of mail is a “material term”, I have considered *Residential Tenancy Policy Guideline # 8* which states as follows:

*A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.*

*To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.*

*The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question.*

Taking into account Policy Guidelines 1, and 8 as well as the above sections of the Act, I find the tenant has met the burden of proof on a balance of probabilities that the parties agreed the landlord would provide a service, that is, expeditious mail delivery, and that the landlord has failed to do so by restricting delivery unnecessarily. I find the landlord is required to provide a key to the mailbox to the tenant. I find the landlord's failure to provide a key plus failure to provide expeditious mail delivery to be a breach of a material term of the tenancy and a breach of the landlord's obligations to the tenant. I therefore find the tenant is entitled to an order under section 62.

Accordingly, I direct as follows:

Within 10 days of the date of this Decision, I direct the landlord to provide the tenant with a key to the mailbox currently used by the landlord.

If the landlord fails or refuses to carry out the terms of this Decision, I direct that the tenant may deduct \$100.00 monthly from her rent commencing January 1, 2020 and continuing the first of each month thereafter.

### Conclusion

Further to sections 27 and 62 of the Act, I direct the landlord to provide the tenant with a key to the mailbox currently used by the landlord within 10 days of the date of this Decision.

If the landlord fails or refuses to carry out the terms of this Decision, I direct that the tenant may deduct \$100.00 monthly from her rent commencing January 1, 2020 and continuing the first of each month thereafter.

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: December 17, 2019

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Residential Tenancy Branch