



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDCT, PSF, OLC, FFT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$1,000 pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:32 am in order to enable the landlord to call into this hearing scheduled for 11:00 am. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

### **Preliminary Issue – Service**

On July 22, 2020, the tenant obtained an order of substituted service, which permitted her to serve the landlord via email. The tenant was also ordered to provide proof of this service to the Residential Tenancy Branch (the "**RTB**").

The tenant testified that she served the landlord via email with the notice of dispute resolution package, supporting evidence, and a copy of the *ex parte* decision permitting her to serve the landlord substitutionally. However, prior to the hearing, she did not provide proof of this. I permitted her to upload a screenshot of the email to confirm her testimony during the hearing. The tenant additionally uploaded a screenshot of a text message she sent the landlord on July 23, 2020 in which she wrote "Hi [landlord], please check your

email. I have sent something important. Thanks.” The text message app indicates this message was read six minutes after it was sent.

I am satisfied that the landlord was served with the required documents in accordance with the Act and the order for substituted service.

### **Preliminary Issue – Tenant’s Claim**

At the outset of the hearing, the tenant testified that she moved out of the rental unit on August 1, 2020. Accordingly, she no longer requires an order that the landlord provide her with services or facilities under the Act or an order that the landlord comply with the Act.

As such, I dismiss these portions of the tenant’s claim, without leave to reapply. The balance of this decision will address the tenant’s monetary claim and her entitlement to recover the filing fee.

### **Issues to be Decided**

Is the tenant entitled to:

- 1) a monetary order of \$1,000; and
- 2) recover her filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the tenant, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the tenant’s claims and my findings are set out below.

The tenant did not provide a copy of the tenancy agreement into evidence. She testified that at the time she filed this application she did not have a copy to submit, but that the landlord recently furnished her with a copy. At the hearing, the tenant testified as to the relevant terms of the tenancy agreement.

The tenant testified that the parties entered into a written, fixed term tenancy agreement starting May 1, 2020 and ending September 30, 2020. Monthly rent was \$2,300 plus utilities. The tenant paid the landlord a security deposit of \$1,150. The landlord returned a portion of the security deposit but has retained some of it due to an outstanding utilities bill. The tenant has not sought any order regarding the unreturned portion of the security deposit. I am unsure if the landlord has filed an application to with the RTB claiming to retain a portion of the security deposit.

The tenant testified that she was not provided with a copy of the key to the mailbox or the key to the bike storage room. She testified that she repeatedly requested copies of these keys from the landlord via text message (which she submitted into evidence), and that the landlord never denied her entitlement to them. Rather, she testified that the

landlord continuously delayed and made excuses for not providing them to her. The landlord never provided the tenant copies of these keys.

The tenant testified that the tenancy agreement makes no mention of the mailbox or the bike storage room.

The tenant testified that the rental unit was her primary residence since she moved into it, and she needed to receive mail due to it being tax season and for reasons relating to her visa. She testified she suffered a large amount of stress not being able to receive mail at the rental unit. Eventually, on July 27, 2020, the landlord arranged for a contractor to attend the rental unit to grant the tenant access to the mailbox. However, the landlord did not pay the contractor the required fee, and the tenant had to pay this. She testified the fee was \$60. She submitted an etransfer receipt showing payment of this amount.

The tenant testified that she was never able to access the bike storage room during the tenancy, and that she had to store her bike with a friend. She testified that this caused to have to take a taxi to work on occasion, as she was not always able to retrieve her bike.

The tenant testified that she is claiming for \$1,000 as compensation for the stress caused by the landlord's failure to comply with the Act and provide her with the keys to the mailbox and bike room. She did not provide any specific calculations as to how she arrived at this figure.

## **Analysis**

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

(the “**Four-Part Test**”)

Section 27 of the Act states:

**Terminating or restricting services or facilities**

**27(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.

Policy Guideline 1 provides additional guidance of the obligations of a landlord:

**KEYS**

The landlord must give each tenant at least one set of keys for the rental unit, main doors, mailbox and any other common areas under the landlord's control, such as recreational or laundry rooms. The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense.

I find that, based on the fact that the landlord did not, in her replies to the tenant via text message, deny that the tenant was entitled to the keys to the mailbox and bike room, and that the tenancy agreement is silent as to whether the use of these facilities was provided, the tenant was entitled to use and access of the mail box and the bike room under the tenancy agreement.

As such, I find the landlord breached section 27 of the Act by restricting the tenant's access to these areas by not providing her with copies of their keys (which Policy Guideline 1 also requires).

As such, the first part of the Four-Part Test is satisfied.

I find that the tenant suffered loss as a result of this breach, namely, the loss of use of these facilities. She also suffered a loss of \$60, incurred when paying a contractor to grant her access to the mailbox.

The tenant also alleges loss in the form of additional stress and inconvenience caused by the inability to use the bike room and mailbox. She quantified this loss as \$1,000 but has not provided any basis for how she arrived at this amount.

Policy Guideline 22 sets out how to compensate a tenant for the loss of a service or facility:

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

I find that the appropriate compensation for the tenant's loss of use of the mailbox and bike room is a retroactive reduction of 10% to the monthly rent for the months she did not have access to the mailbox or bike room (5% for loss of use of the mail box and 5% for loss of use of the bike room).

In addition to this, the tenant is entitled to recover the \$60 she paid to the contractor to give her access to the mailbox, as that cost ought to have been borne by the landlord.

I find that the tenant acted reasonably to minimize her loss. She gave the landlord multiple opportunities to provide her with the access to which she is entitled. The landlord declined to do this. There is little else the tenant could have reasonably been expected to do in the circumstances.

Pursuant to section 72(1) of the Act, as the tenant has been successful in the application, she may recover their filing fee from the landlord.

### **Conclusion**

Pursuant to sections 67 and 72 of the Act, I order that the landlord pay the tenant \$850, representing the following:

10% rent reduction (May, June, and July 2020)	\$690
Reimbursement of payment to contractor	\$60
Filing fee	\$100
<b>Total</b>	<b>\$850</b>

I order the tenant to serve this decision, and a copy of the attached monetary order on the landlord as soon as possible follow receipt of this decision from the RTB.

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: August 7, 2020

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Residential Tenancy Branch