



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      PSF, OLC

### Introduction

This hearing was scheduled to convene at 11:00 a.m. on January 6, 2023 concerning an application made by the tenant seeking an order that the landlord provide services or facilities required by the tenancy agreement or the law, and for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

The tenant attended the hearing, gave affirmed testimony, and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call.

The tenant testified that the landlord was served with the Notice of Dispute Resolution Proceeding by registered mail on September 9, 2022 and has provided a copy of a Registered Domestic Customer Receipt stamped with that date by Canada Post. The tenant was also successful in obtaining an order permitting the tenant to serve the landlord by email, and the Substitutional Service Decision is dated September 8, 2022. The tenant served the landlord again, by email, on September 12, 2022 and a screenshot of the email with attachments has been provided for this hearing. I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

The landlord has not provided any evidentiary material, and the tenant testified that all of the tenant's evidence has been provided to the landlord. I accept that, and all evidence of the tenant has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- has the tenant established that the landlord should be ordered to provide services or facilities required by the tenancy agreement or the law?

- has the tenant established that the landlord should be ordered to comply with the *Residential Tenancy Act*, regulation or tenancy agreement?

### Background and Evidence

The tenant testified that this fixed-term tenancy began on May 1, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$200.00 was payable on the 1<sup>st</sup> day of each month, which has been increased to \$222.00 per month and there are no rental arrears. At the outset of the tenancy, the landlord at that time collected a security deposit from the tenant in the amount of \$100.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a house that has been modified with several additions and 3 other suites. The landlord sold the property, and the current landlord does not reside on the property. A copy of the tenancy agreement has been provided for this hearing.

The tenant further testified that the tenant has been using an area under a deck as a workshop since the beginning of the tenancy. The tenant is a self-employed electrician and carpenter and uses the space to organize the tenant's tools and materials, and it is the tenant's sole means of support. The tenant did some of the renovations for the previous landlord, and removed a lot of garbage from under the deck area, and with one of the owners, built shelves and put in a workbench. Photographs of the area have been provided by the tenant for this hearing. The tenant's evidence also contains an explanation that the underdeck is divided into 4 sections, and that when the tenancy agreement was signed in 2015 the tenant installed security gates, flooring and fencing that defined the area. The tenant's area is about 16 x 9 feet, and the other areas have been shared among the other 3 tenants since the beginning of the tenancy.

On December 29, 2021 the landlord gave the tenant a Notice of Rent Increase, increasing the rent by \$3.00 per month commencing on May 1, 2021, and a copy has been provided for this hearing. It is addressed to the tenant at an address which commences with "Garage & under deck." On January 5, 2022 the tenant sent an email to the landlord agreeing to increase the rent to \$222.00 per month, which the landlord accepted.

On August 22, 2022 the landlord sent an email to the tenant telling the tenant to move items out of the area under the deck for use of another tenant for storage. A copy of the email has been provided for this hearing. The tenant replied the following day stating that when the tenant proposed an increase in rent, it was for the continuance of the tenancy agreement.

On September 13, 2022 the landlord sent an email to the tenant stating that the landlord is not making any changes to the tenancy agreement, so the tenant can continue to use the space under the deck, but the landlord is still concerned about the lack of storage on the property and will need to come up with some solutions.

The tenant seeks an order that the landlord comply with the tenancy agreement, and allow the tenant to continue to use the space under the deck as he has since 2015.

### Analysis

The *Residential Tenancy Act* prohibits a landlord from terminating or restricting a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation or if the service or facility is a material term of the tenancy agreement. A landlord may restrict or terminate a service or facility, other than essential services or facilities and those that are a material term of the tenancy agreement, but the landlord must give the tenant 30 days written notice in the approved form and reduce the rent to compensate the tenant for the loss.

A material term is a term that the parties agree is important enough to give the parties the right to end the tenancy agreement if the other party breaches that term, even if the service or facility is not essential to the tenant's use of the rental unit as living accommodation. In this case, the tenant did not indicate that the space under the deck is a material term of the tenancy agreement, but has been provided with that space since the beginning of the tenancy.

The landlord gave the tenant a Notice of Rent Increase, which increased the rent by \$3.00 per month, and the tenant proposed an increase by \$22.00 per month, and has honoured that proposal. The landlord has not given a notice in the approved form to remove or restrict the space under the deck, and rent has been increased, not decreased.

I order the landlord to comply with the *Act* and the tenancy agreement by permitting the tenant to continue to use the space under the deck that has been a part of this tenancy since 2015.

### Conclusion

For the reasons set out above, I hereby order the landlord to comply with the *Act* and the tenancy agreement, and that the landlord permit the tenant to continue to use the space under the deck that has been a part of the tenancy since 2015.

This order is final and binding and may be enforced.

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: January 06, 2023

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Residential Tenancy Branch