



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      PSF, OLC, FF

### Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and to recover the cost of the filing fee.

The tenant, the tenant's advocate, and the landlords attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Issue(s) to be Decided

Is the tenant entitled to the orders sought as noted above and recovery of the cost of the filing fee?

### Background and Evidence

I heard evidence that the tenancy began on March 1, 2008 and current monthly rent is \$800. The evidence shows the rental unit is on a property in which an auto repair shop is across from the rental unit, a 3-bedroom house. The landlord owns the auto repair shop and the rental unit and the shop are separated by a parking lot.

Filed in evidence was the written tenancy agreement.

As to his request for an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act, the tenant wrote in his application the following:

*After 14 years of receiving my mail at my home the Landlord has given me notice that I will no longer be receiving my mail at my home address.*

[Reproduced as written except for anonymizing personal information to protect privacy]

The tenant filed a written, signed notice from the landlord, dated August 9, 2022, informing the tenant that as of that day, all mail addressed to the tenant could be collected at the main post office, for a short time. Following that, the tenant would need to get his own post box. The landlord wrote further, "Due to circumstances I am no longer responsible for your mail in (repair shop name) mail box".

The tenant testified to the following: The landlord's wife, who I note is a co-landlord on the written tenancy agreement, typically picks up the mail at the "super box" and drops off the tenant's mail at the mailbox attached to the rental unit. The tenant did not understand why his mail delivery was stopped, and currently, his mail is being held at the local post office for his collection pending the outcome of the hearing.

The tenant's advocate stated that the tenant has been getting mail for the 14 year tenancy and was never an issue prior.

In response, the landlord testified to the following: The tenant reported the landlord to the police, saying that the landlord had been spying on the tenant's daughter by placing

a shop surveillance camera towards the daughter's bedroom. The police came to investigate, inspected the camera and found it to be for security purposes. The camera in question had been in the same location for 10-12 years and used for security around the shop. The neighborhood where the shop is located requires that they have security in place. The complaints were unjustified and spiteful, which made the landlord nervous and scared about other potential false allegations made against them. For this reason, the landlord had to distance themselves from the tenant, for fear the police might show up and arrest them. The landlord was afraid the tenant would accuse them of mail fraud. The landlord phoned the RTB and were told that mail was not a part of their jurisdiction and said it is a federal matter.

The landlord supplied photographic evidence showing the shop, the house and the fence around the property, with a warning sign about camera surveillance.

In response to my inquiry, the landlord said that the small community they live in, outside the main city, does not have individual home mail delivery, which is why the mail is dropped off at a neighbourhood "superbox". The mailbox in the superbox is for the shop and not for the rental unit address. The tenant may rent a mailbox at the local post office.

As to the tenant's request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, the tenant wrote the following in his application:

*I have issued a letter to the landlord in regard to my loss of quiet enjoyment, as his employees have been using his business in front of my home using power tools, revving engines, and having social gatherings well past the hours of business operation as per our agreement. Once the letter was recieved the issues only intencefied further destroying the quiet enjoyment of my home.*

[Reproduced as written]

The tenant submitted documentary evidence with daily logs of different events in and around the property, including the interaction with the police regarding the camera placement, requests from the landlord about doing additional work around the premises and noises coming from the repair shop.

In summary, the tenant claimed that the employees were causing after-hours excessive noises, including using power tools, revving engines and driving erratically, disrupting

his quiet enjoyment. The tenant and advocate submitted these issues have been ongoing for over a year.

The tenant also submitted letters from witnesses, one regarding an incident on August 25, 2021, from the tenant's friend, upon leaving the home, and being asked by the landlord who she was. Another letter was from a neighbour of the tenant, who stated there were times a worker goes into the shop after hours, and another letter from someone who stated the tenant received multiple text messages from the landlord wanting to know who was on the property.

There is no bylaw enforcement in the small community, as the residential property and repair shop is located in a rural industrial area.

In response, the landlord testified to the following: The neighbourhood is in an industrial area and the noises could be from anywhere. The landlord has an employee who has been with him for years and is now running the shop. This employee has ADHD and needs to stay busy working. The employee, who races in his off-time, rolled his racing car, and was trying to get a new car ready for racing. The landlord denied that there is excessive noise, and if so, only occasionally. The shop is sporadically used and could go 3 weeks with no after hours activity, though it might be busier during the summer season.

The landlord referred to the addendum to the written tenancy agreement, which states as follows:

3: Tenant landlord Contract:

- 3a) The tenant accepts that a automotive repair business is operating at [ ] [ ] and that some disturbances will occur beyond the landlord control. The landlord will show due diligence to Maintain working hours between 7:00am to 7:00pm weekdays and some weekends. The tenant agrees to be polite and courteous to [ ] Customers. The tenant may not use the blacktopped area in front of the house for Parking or obstruct in any Access to the repair shop.

[Reproduced as written except for anonymizing personal information to protect privacy]

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The onus to prove their case is on the person making the claim.

A good portion of the evidence related to a list of grievances not directly related to the matters specifically raised in the application. I have not addressed this evidence as I find it not relevant.

As to the tenant's request to have his mail service returned, section 65 of the Act states if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make orders.

In this case, the undisputed evidence was that the local municipality does not make home mail delivery and that the landlord has been dropping off the tenant's mail that was left in the superbox. I also find the evidence undisputed that the landlord's mailbox in the superbox was for the address of the auto repair shop and that the landlord, as a courtesy, dropped the mail for the tenant.

I have reviewed the written tenancy agreement and find that home mail delivery was not a service provided. I also find insufficient evidence that the landlord contravened the Act or the regulations when they discontinued the courtesy mail delivery.

For these reasons, I find the tenant submitted insufficient evidence that the landlord has not complied with the written tenancy agreement, the Act or the regulations. I therefore **dismiss** the tenant's request for an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act, **without leave to reapply**.

As there is no local home delivery, the tenant's remedy is to rent a mailbox at the local post office.

As to the tenant's request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, this request related to the tenant's allegation that he was deprived of his right to quiet enjoyment by the noises from the auto repair shop, after hours.

First, I find the written tenancy agreement addendum addressed an auto repair shop is operating at this address and that some disturbances will occur beyond the control of the landlord.

Tenancy Policy Guideline 6 B applies and states that a landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

I find I have no jurisdiction under the Residential Tenancy Act over a commercial property as I find the commercial property is not part of the residential property. The auto repair shop is a separate and distinct commercial property. The employees and customers of the auto repair shop are not other tenants for which the landlord would have any control and I find the tenant was made aware by the tenancy agreement that this shop would potentially create disturbances.

For this reason, I **dismiss without leave to reapply** the tenant's request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, as I find the Act does not apply to a commercial property.

As I have dismissed the tenant's claims, I **dismiss** the tenant's request for recovery of the cost of the filing fee, **without leave to reapply**.

### Conclusion

The tenant's application is dismissed, without leave to reapply, due to insufficient evidence and due to lack of jurisdiction to decide a matter involving a commercial property.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 18, 2023

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Residential Tenancy Branch