



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNCD, OLC, PSF, RR and FF

### Introduction

Application was made by the tenant on January 23, 2012 seeking monetary compensation and other remedies arising from the landlord's removal of storage areas stated to have become part of the rental agreement by acquiescence.

As a preliminary matter, the tenant has submitted claims for compensation for her time in preparing her application and postage, items for which there is no authority under the *Act* to make an award and which cannot be considered.

### Issue(s) to be Decided

Has the tenant established a right to utilize common areas for storage not set out in the rental agreement and is the tenant entitled to monetary compensation for the cost of moving and storing her displaced items and for loss of facilities?

### Background and Evidence

This tenancy began on August 1, 2008. Rent is \$532 per month and the landlords hold a security deposit of \$260 paid at the beginning of the tenancy.

During the hearing, the tenant gave evidence that she has, for the past two years, stored some off her property in the attic of the rental house which is accessible only through her suite, and in the basement.

The tenant submitted a copy of a "Caution Notice to Tenant" dated January 16, 2012 noting that:

“During a routine inspection of your suite, it was noted that access to the attic is blocked off by the tenant’s items. These must be removed immediately. A follow up inspection will be booked to ensure compliance.”

Another notice dated January 12, 2012 to all tenants advised that the basement would be cleared of all items except for their bicycles by January 28, 2012 and asked that tenants remove all other personal items.

In complying with the landlords’ request, the applicant tenant incurred costs and claims \$180 for her time at \$30 per hour, \$59.95 for February 2012 rent for a small locker and \$11.14 for a lock. In addition to receipts for these costs, the tenant submitted a letter from another tenant stating that he had seen her possessions in the basement for two years.

The landlord stated that the applicant and other tenants had ended up with copies of a key he had originally given to another tenant and that he himself had never given the applicant a key or expressed permission for her to use the basement.

The one exception granted to all tenants was permission to store their bicycles in the basement after a storage shed in the yard had sprung a leak.. The landlord said it has been made clear to all tenants that the arrangement is temporary until the leaking shed is repaired which is imminent. Out of concern that the intention might be misunderstood by other tenants, he submitted agreements signed by three of them in January 2012 expressing the understanding that the basement use is temporary.

There are a couple of other items in basement by special permission, but the landlord stated he has never wavered in his intention to retain and eventually utilize the basement for his own use.

A tenant of 10 years gave evidence on behalf of the landlord that she had never been led to believe that basement storage was included or a right under her rental agreement.

The landlord stated that he would have acted earlier to curtail the encroachment on to the common areas for storage, but that his life had been preoccupied by most of the previous year by grave illnesses in both his and his wife’s parents.

The landlord stated that he had never given the applicant tenant consent to use the attic for storage and that access was necessary from time to time when servicing the building, most recently for work on a dryer vent.

The tenant also expressed concern over needed repairs to the rental unit, one being a slow drain and the other problems with a couple of the windows in the rental unit. The landlord stated that he had not been aware of these concerns until the hearing. If these continue to be of concern, the tenant should write to the landlord, specify the items in need of repair and seek a remedy separately if necessary.

### Analysis

It is a general principle of residential tenancy law that a material term of a rental agreement can diminish in its materiality over time if it is not upheld.

However, in the present matter, I accept the evidence of the landlord that to minimize stress for both he and the tenants, he has tried to avoid micro-managing the rental building but felt the recently growing storage creep had to be addressed.

In the absence of any expressed allowance for the storage areas in the rental agreement and given the understandable delay in the landlords taking action, I find that the tenant has not established an entrenched right to use of the attic or basement beyond what the landlord will allow. Therefore, the application is dismissed without leave to reapply unless additional cause should arise.

### Conclusion

The application is dismissed without leave to reapply.

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: February 13, 2012.

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Residential Tenancy Branch