



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BELMONT SHORE BUILDING MANAGER  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: DRI RR FF

### **Introduction**

Both parties attended the hearing and gave sworn testimony. The tenant provided evidence that she had served the landlord with the Application for Dispute Resolution personally. The landlord agreed he had received it as stated. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To find a charge for a storage locker is an illegal increase of rent and to obtain an Order for a rebate of rent to recover any illegal increase in rent pursuant to section 43(5);
- b) In the alternative to find the withdrawal of the storage locker does not comply with section 27 of the Act; and
- c) To recover the filing fee for this application.

### **Preliminary Issue:**

The tenant's name was stated incorrectly on the Application as she had written her first name both as the first and last name. She asked that it be amended and the landlord had no objection as the amendment is the name that is on her lease. The amendment is granted.

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

Has the tenant proved on the balance of probabilities that there was an increase in her rent that did not comply with the Act and that she is entitled to a rebate for the excess paid and to recover the filing fee?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. It is undisputed that the tenancy commenced March 1, 2015, rent is currently \$2385 a month and a security deposit of \$1150 was paid. The lease agreement in evidence is a fixed term lease from March 1, 2015 to February 29, 2016 and then continued on a month to month basis. The lease notes the facilities

included in the lease such as a washer, dryer, stove and notes under “Other Facilities: \*1 year free storage + 1 yr. free internet shaw”. Directly below the notes on facilities, the lease states “\*Upon 30 days written notice, the landlord may change or remove any of these services, if the method by which they are supplied to the landlord changes”.

On March 14, 2017, the landlord notified the tenants that the lockers were no longer free and that they would need to sign a storage agreement and pay \$30 a month for the storage locker, commencing March 2017. The landlord pointed out the asterisk beside the 1 year free storage and the asterisk in the note below. He said the tenant actually got 2 years free storage but the building was in development. When it was finished, the locker storage had to be moved so the lockers are no longer free.

The tenant argues and relies on sections 6 and 14 of the Act and said the new charge should not be enforceable as no amount was stated in the tenancy agreement so it was not clear and a change to the tenancy agreement can only be made if both landlord and tenant agree. She obtained information from the Residential Tenancy Branch who noted these sections but also said it was a grey area and it depends on how this was stated in the tenancy agreement.

In evidence is the tenancy agreement, emails, the new storage agreement and statements of the tenant. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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**Analysis:**

In section 43, the *Residential Tenancy Act* provides that an increase in rent may only be imposed up to the amount calculated in accordance with the Regulations. I find the tenancy agreement in evidence includes only 1 year of free storage. I find the ending of the free storage is not a change in the terms of the lease or an increase of rent.

Pursuant to section 6 of the Act, I find the term clearly expresses the rights under it – that is the right to one year of free storage and in fact, the landlord gave her two years of free storage as the building was still under development. I find it is not a vague term.

I find section 14 of the Act regarding amendments does not apply to this situation as I find the tenancy agreement was not amended. I find the agreement limited the tenant to one year of free storage and the landlord is now saying it is at an end after allowing an additional year.

The landlord pointed out the clause in the lease that stated the landlord might change or remove the services of facilities upon 30 days written notice if the method by which they are supplied to the landlord changes. I accept the landlord's submission that the

storage lockers had to be moved to a different part of the building but I find they did not give the tenant 30 days written notice. The notice in evidence is dated March 14, 2017 and the evidence was that the landlord wanted to collect the \$30 fee for the storage lockers immediately. I find the earliest this charge might be imposed is April 14, 2017.

**Conclusion:**

I find the tenancy agreement is enforceable in removing the one year of free locker storage and the landlord is entitled to enter into a separate agreement concerning locker storage. I dismiss that part of the tenant's Application. However, I find the new agreement did not come into effect until April 2017 as the tenancy agreement provided that there would be 30 days written notice of changes to facilities.

I find the tenant entitled to recover only \$50 of her filing fee due to her limited success.

**I HEREBY ORDER THAT the tenant may deduct \$50 from her rent to recover her filing fee.**

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: May 30, 2017

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Residential Tenancy Branch