



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This hearing was convened in response to applications by the tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- Other unspecified relief.

Both the tenants and the landlord appeared at the hearing. The tenants were represented at the hearing by tenant M.W. (the “tenant”), while the landlord was represented at the hearing by advocates L.M. and R.W. (the “landlords”). Both parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenants’ application for dispute resolution by way of Canada Post Registered Mail on June 16, 2017. Pursuant to section 89 of the *Act* the landlord is found to have been duly served with the tenants’ application.

Following opening remarks, I sought clarity on the ‘Other’ unspecified relief that was being sought by the tenants. Tenant M.W. explained that he had inadvertently indicated on his application that he was seeking ‘Other’ relief, when in fact he was seeking a monetary award of \$21,600.00. The landlords acknowledged that they were aware of the contents of the tenants’ application, and were prepared to proceed with the matter, despite not being served with an application for dispute related to recovery of a monetary award.

Issue(s) to be Decided

Are the tenants entitled to a monetary award?

Background and Evidence

Undisputed testimony presented at the hearing by the tenant detailed that this tenancy began on September 1, 2007 and ended in April 2017. Rent began at \$1,850.00 and rose to \$2,150.00 over the course of the tenancy. A security deposit of \$925.00 collected at the outset of the tenancy by the landlord was returned to the tenants following the conclusion of the tenancy.

The tenant explained that he was seeking a monetary award of \$21,600.00 because of the landlord's breach of the *Act*. The tenant said that he was informed in February 2008 that the landlord would no longer be permitting the tenants to have use of the storage locker that had previously been included at no charge as part of their monthly rent. The tenant stated that he was not advised of his right to be compensated for termination of this service as is prescribed by section 27(2) of the *Act*.

When asked to detail how he reached the figure of \$21,600.00 the tenant explained that this figure represented an approximation of the overall loss in the value of the tenancy based on the use of a storage locker for 110 months (the length of time which the landlord did not provide him with a storage locker) at a cost of \$200.00 per month. The tenant said that he had arrived at the figure of \$200.00 per month for the cost of a storage locker on the property after having discussed the matter with the building's concierge. He explained that the concierge informed him that storage lockers in the building were regularly being rented for this amount, if not for amounts much higher.

The tenant continued by describing the good relationship that he enjoyed with the concierge of the building, and noted that the concierge allowed him use of other, unoccupied storage lockers free of charge for the length of his tenancy.

The landlords argued that the tenant should be estopped from entitlement to damages because of the doctrine of Laches. This doctrine provides that, "it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver." The landlords argued that the tenant should not be granted a monetary award because the tenant did not act reasonably to bring his concerns to the landlord's attention until nearly 10 years after the services had been taken away and, because the tenant did not suffer an actual financial loss related the loss of services.

The tenant stated that he was unaware of his rights under section 27(2) of the *Act* until the tenancy had ended, and it was for this reason that he did not pursue the matter until recently. In addition, the tenant argued that he did suffer a loss, because the tenancy agreement called for storage to be included in the rent. He said that he continued to pay

the entire amount of rent, but did not have the use of the storage locker assigned to him by the landlord as part of the tenancy.

Analysis

Section 27(2) of the *Act* states;

(1) A landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and 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.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove their entitlement to a monetary award.

The tenant argued that he had suffered a loss in value of the tenancy of \$200.00 per month because the landlord had restricted his use of the storage locker, which was a term of the tenancy agreement.

While a violation of section 27(2) of the *Act* did occur, I do not find that the tenant has suffered a financial loss as a result of this infringement of the *Act*. The tenancy continued uninterrupted for nearly 10 years following the removal of the storage area. This indicates that the tenants were satisfied with the rental unit. Furthermore, the tenants benefitted from the complimentary use of storage facilities inside the building, thanks to their relationship with the concierge.

Section 16 of the *Residential Tenancy Policy Guideline* examines the issues of compensation in further detail. It notes:

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. Little evidence was presented at the hearing by the tenants that their tenancy was greatly affected by the loss of the storage facility provided by the landlord. They were not forced to store their goods offsite, nor did they have to incur expenses related to a 2nd party storage facility.

For these reasons, the tenants' application for a monetary award is dismissed.

Conclusion

The tenants' application for a monetary award 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: December 11, 2017

Residential Tenancy Branch