Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding

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520 MOODY PARK RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, PSF, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing via conference call and provided affirmed testimony. The tenants' agent, J.R. (on behalf of all named tenants) and in part for the tenant, V.L. (self-represented) state that the landlord was served with the notice of hearing package and the submitted documentary evidence. The landlord's counsel, M.D. (the landlord) confirmed receipt of these packages. Both parties confirmed the landlord served the tenants with the submitted documentary evidence via Canada Post Registered Mail. Neither party raised any service issues. I accept the undisputed evidence of both

parties and find pursuant to section 90 of the Act that both parties have been sufficiently served.

Preliminary Issue(s)

There are applications from 12 separate tenancies "joined" to be heard together. In these applications, the occupants of 12 tenancies have applied to cancel the landlord's notice to terminate facilities (storage lockers) from their tenancies. The tenant, V.L. is self-represented and the agent, J.R. speaks on behalf of all parties. The landlord is represented by counsel.

At the outset, the tenants' application was clarified with both parties in that the tenants only seek an order cancelling the landlord's notice to terminate facilities (storage locker(s)) and recovery of the filing fee(s). The tenants' agent clarified that the selection for the landlord to provide services of facilities was made in error as no services or facilities have been removed (PSF). This portion of the tenants' application was cancelled by the tenants. The landlord confirmed their understanding and made no objections. The hearing proceeded on this basis.

At the conclusion of the hearing, the tenant, C.P. (Unit #306) expressed a wish to provide evidence after the landlord's closing submissions. C.P. stated that he wished to provide additional evidence. Counsel for the landlord argued that this was not appropriate as the landlord's closing submissions have been made. The Tenant's agent, J.R. stated that this was not required and advised the tenant, C.P. to allow for the hearing to conclude without further evidence. C.P. stated that he agreed and cancelled his request to present further evidence. All parties confirmed their understanding and agreed.

Both parties provided email contact information for the tenant's agent and the landlord's counsel. As such, copies of the decision shall be sent to these two parties and distributed by them to the named parties.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the landlord's notice to terminate their storage locker entitlement(s)?
Are the tenants entitled to recovery of the filing fee(s)?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

All of the applicants have joined together stating that storage lockers were provided as part of their tenancies by their original landlord. Each of the applicants began their tenancies at different times, but was given a storage locker as part of their rental agreement to store belongings that could not be stored in the rental unit(s). The lockers are approximately 7'3" high, 4'0" long and between 3'4" and 4'4" deep. The applicants describe the contents of their lockers as: camping accessories, Christmas decorations, bicycle, recreational (sport) equipment, paint, a kayak and personal belongings. Each of the tenants have had use of these lockers between 2 and 19 years based upon their tenancies.

The applicants have stated that a new owner has taken over in May 2019 and have given notice to terminating or restricting a service or facilities (storage locker(s)) by June 30, 2019. The tenants seek an order cancelling the landlord's notice.

The tenants' agent, J.R. has confirmed that each of the named tenants received the landlord's "Notice Terminating or Restricting a Service or Facility" #RTB-24, 30 days' notice as of June 30, 2019 that the "service or facility described as Use of a storage locker will be terminated/restricted as follows use will be fully terminated As a result of the termination/restriction, your rent will be reduced by $40 monthly effective July 1, 2019." The landlord's counsel confirmed that each of the named tenants received this notice with an additional letter re: Notice Terminating Storage Locker Use and Notice of Rent Increase. It states in part,

Notice Terminating or Restricting a Service or Facility. Please be advised that construction will begin soon on the basement area to construct additional suites. Therefore, we require you to empty the storage locker you have been using before June 30, 2019. You will see on the form your rent has been reduced as a result of this termination…

The applicants have argued that the landlord's notice is material term violation of the tenancy agreement. The applicants argue that the storage locker(s) are essential to their tenancy.

The applicants have referenced Residential Tenancy Branch Policy Guideline #22 (b) Essential or provided as a material term which states in part,

An "essential" service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation or use of the manufactured home site as a site for a manufactured home, the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Even if a service or facility is not essential to the tenant's use of the rental unit as living accommodation, provision of that service or facility may be a material term of the tenancy agreement. When considering if a term is a material term and goes to the root of the agreement, an arbitrator will consider the facts and circumstances surrounding the creation of the tenancy agreement. It is entirely possible that the same term may be material in one agreement and not material in another.

In determining whether a service or facility is essential, or whether provision of that service or facility is a material term of a tenancy agreement, an arbitrator will also consider whether the tenant can obtain a reasonable substitute for that service or facility. For example, if the landlord has been providing basic cablevision as part of a tenancy agreement, it may not be considered essential, and the landlord may not have breached a material term of the agreement, if the tenant can obtain a comparable service.

The applicants have referred to an estimate provided by a local storage company in which the rental of a 5' X 8' X 10' locker costs approximately $124.95. They argue that this is a cost that is in excess of the compensation provided by the landlord to obtain storage. The applicants also stated that the onsite storage is more convenient with 24 hour access in comparison to the 7am-8pm, mon-fri and 8am-5pm for all other days and 10-30 minute walk from the rental property.

The landlord disputes the tenants' claims that the storage locker(s) are essential to the tenancy. The landlord stated that each of the tenants could obtain offsite storage at a reasonable cost based upon the amount of space of each storage locker. The landlord clarified that offsite storage is substantially different than the current lockers provided as the current lockers are no more than thin wood slates nailed together. Off-site storage locker facilities provide much more amenities to safeguard the contents. The landlord stated that the loss of an on-site storage locker would be "inconvenient" but not essential. During the hearing the landlord's counsel asked the tenant, V.L. if he would

have to move if the application was rejected. The tenant answered that he could still probably use the property as is, but that it would be a hardship to lose the storage for his kayak and bicycle.

The landlord's counsel called the owner, D.C. as a witness who described "not storage lockers, but storage areas". The landlord stated that these areas are not the same as a professional storage facility, but as simple wooden slats nailed together built in 1960 in the basement of the building. The owner stated that the "storage lockers" are not a material term of the tenancy agreements. The rental units can be used and enjoyed without the "storage lockers". The owner clarified that only some of the tenants have use of the "storage lockers" and not all tenants have one. The owner stated that most of the items listed by the tenants are those that can be stored in the rental unit itself. During questions of the owner, it was pointed out that another tenant had notice(s) given for the tenant storing items in his rental unit. The owner argued that was not the same as the tenant was storing commercial tools and using them in the unit for wood working. The owner argued that some of the materials in that situation were flammable and not safe for storage in the rental property.

The landlord's counsel has argued that the "storage lockers" are not essential to the use of the accommodation, but instead stated that the loss of the "storage lockers" is an inconvenience. The landlord's counsel has argued that the "storage lockers" are not a material term as they are not even listed in the signed tenancy agreements. Counsel argues that the section 27 of the Act states that 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 a living accommodation or is a material term of the tenancy agreement. Counsel for the landlord argues that the burden falls on the tenants and that they have failed to provide sufficient evidence.

The landlord also stated that the 5% rent reduction equal to $40.00 in compensation to the tenants are based upon the size and amenities in comparison to those offered in a commercial off site storage facility. The landlord also stated that some facilities are 24 hour accessible.

The tenants argued that the closest comparable storage facility is in a different city approximately a 10-30 minute walk away. The tenants also argue that they would suffer the loss of use regarding access hours as those facilities have restricted hours.

Analysis

Section 27 of the Act addresses terminating or restricting services or facilities. Pursuant to this section, a landlord must not terminate or restrict a service or facility if:

(a) the service or facility is **essential to the tenant's use of the rental unit as a living accommodation**, or
(b) providing the service or facility is **a material term of the tenancy agreement**.

In this case, both parties confirmed that the landlord has given notice to terminate the use of "storage lockers". The tenants have argued that the "storage lockers" are a material term of their tenancies. The landlord has argued that they are not and that they would only pose an "inconvenience".

Residential Tenancy Branch Policy Guideline #22 speaks to the burden of proof and states in part,

Where the tenant claims that the landlord has restricted or terminated a service or facility without reducing the rent by an appropriate amount, **the burden of proof is on the tenant**. There are six issues which must be addressed by the landlord and tenant.
• whether it is a service or facility as set out in Section 1 of the Legislation;
• whether the service or facility has been terminated or restricted;
• whether the provision of the service or facility is a material term of the tenancy agreement;
• whether the service or facility is essential to the use of the rental unit as living accommodation or the use of the manufactured home site as a site for a manufactured home;
• whether the landlord gave notice in the approved form; and
• whether the rent reduction reflects the reduction in the value of the tenancy.

In this case, it is clear that section 1 of the Act, "Service of facility" (g) storage facilities is on point for the tenants request regarding the notice of termination for "storage lockers". A review of the submitted signed tenancy agreements show that "storage lockers" are not addressed in any of the provided agreements. I find that "storage lockers" are not a material term of the tenancy as submitted by the tenants. The details of the submissions clearly show that the use of these "storage lockers" are not essential to the use of the rental unit as living accommodations. The tenants provided submissions that the majority of items being stored were "seasonal items" not used daily except for a bicycle. Proper notice was given to all of the tenants in the approved form as confirmed by both parties. A review of the rent reduction of 5% equal to $40.00 appears reasonable in the circumstances when compared to off site commercial storage facility conditions.

I find that the use of the storage locker for each of the tenants is not essential to their use of the rental unit as living accommodations as they are not necessary, indispensable or fundamental. Storage can be replaced by obtaining one in an offsite location by purchasing space in a commercial storage facility of like conditions. This is

shown in the submissions by both parties. I also find that in the circumstances the landlord has provided sufficient compensation for the loss of use of this facility.

Conclusion

The tenants applications are dismissed.

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: August 26, 2019

Residential Tenancy Branch