# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards



## DECISION

Dispute Codes PFS, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the filed under the Residential Tenancy Act, (the "Act") for the landlord to provide service required by the tenancy agreement or law, for a rent reduction for loss of service, for a monetary order for loss, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Preliminary and Procedural Matter

In this case, the six tenants made their respective applications and the applications were joined, this was based on that the matters in dispute were the **same issues**.

While I accept a portion of their applications are related which is for monetary compensation for loss of service; however, not all matters in dispute are the same.

For example,

Tenants' 1, 2, and 3, seek to have the landlord provided services, storage, that are not included in the rental agreement, whereas Tenants' #4, #5, and #6, storage is included in the rent, and are simply seeking a rent reduction for loss of service.

Therefore, I must determine first whether or not storage is provided under an agreement outside their tenancy agreement for tenants 1, 2 and 3.

I find the applications of tenants #4, #5 and #6 should not have been joined, as that is not the **same** issue that I must determine. I will therefore, only consider the applications of tenant 1, 2 and 3. Therefore, I decline to hear the application of tenants #4, #5, and #6 and I dismiss their respective applications with leave to reapply.

Issues to be Decided

Is the landlord required to provide services or facilities required by the tenancy agreement or law?
Are the tenants entitled to reduce rent for services agreed upon by not provided?

Background and Evidence

Tenant 1 tenancy began on May 1, 2018. The tenancy agreement filed in evidence does not list storage included in the rent. Tenant 1 testified that when they entered into their tenancy agreement, they were told that once a storage locker became available, they would be allowed to receive a locker. Tenant 1 stated that there was never an extra charged .The tenant stated that in May 2019, there were a number of people moving out and they were lucky enough to be given two storage lockers. The tenant stated that the new landlord fully knew they had these lockers as it was identified in an information sheet that was requested by the purchaser.

On cross-examination of Tenant 1 by the landlord's counsel the tenant testified that they received the lockers from their father who was acting as the property manager at the time. Tenant 1 stated that they always had a professional relationship with their father when it came to him managing the property. The tenant stated they received exactly what was promised. Tenant 1 stated they did not have their father attend the hearing because he is retired and does not want to be involved and he has other health issues.

Tenant 2 tenancy began in August 2015. The tenancy agreement filed in evidence does not list storage included in the rent. Tenant 2 testified that when they entered into their

tenancy agreement, they were promised a storage locker once one became available, the tenant stated they received a locker in March or April 2019.

On cross-examination of Tenant 2, by the landlord's counsel asked tenant 2, if they were aware of a letter dated September 26, 2019, which stated that the property manager gave the storage locker without the authority of the landlord. The Tenant 2 indicated that they were aware of the letter.

Tenant 3 tenancy began in November 2017. The tenancy agreement filed in evidence does not list storage included in the rent. Tenant 3 testified that they received a locker when they took possession of the rental unit.

On cross-examination of Tenant 3, by the landlord's counsel asked tenant 3, if storage was given when they entered into the tenancy agreement, then why is storage is not checked off. Tenant 3 stated it was not discussed. The tenant 3 stated that they received the storage locker from their grandfather who was the property manager. Tenant 3 stated that they never received any special treatment from their grandfather.

The witness for the tenants JS, testified that they have been a tenant since 2003 and storage was included in their tenancy agreement and they received a storage locker two weeks later. JS stated that they cannot speak to the individual agreements.

The advocate for the tenants submits that the tenants were promised a storage locker at the start of the tenancy and although this was not on their tenancy agreement, it was a verbal agreement that this would be provided under their tenancy agreement, which would mean storage was included in the rent.

The advocate submits that under section 1 of the Act, the tenants have the right to rely upon the verbal agreement of the landlord and agreement is whether written, oral, expressed, or implied.

The advocate submits that the new landlord knew the storage lockers were included in the rent for these tenants when they purchased the property as they had all the tenants complete an information sheet, which would show they had a storage locker.

The advocate submits that under section 27 of the Act, if those services are terminated, such in this case that the landlord must give proper notice and reduce the rent for the value for the loss of the service, which has not been done in this case. The advocate submits the tenant were given a letter on April 26, 2020, telling them they had to remove their belongings by April 30, 2020, which is only four days notice.

The landlord testified that entered into a contract to purchase the property in November 2018 and did not take ownership of the property until May 2019. The landlord stated the tenancy agreements provided for these tenants show that storage was not included in the rent and there were no amendments to the tenancy agreement.

The landlord testified that they were told that the tenants should never had storage lockers and that Tenant 1 and Tenant 2 only received the locker because their father/grandfather was the property manager at the time. Tenant 3 was given a storage locker by the manager knowing this was not allowed, which the property manager acknowledged.

The landlord testified that they were in the process of purchasing the property and had the tenants complete an information sheet. This was solely for the purpose of purchasing the property to review information and compare it with the tenancy agreements.

Counsel for the landlord submits that storage was not provided under the tenancy agreement and no consideration was given as there were no storage lockers available. Counsel submits that the tenancy agreements are in writing, and any changes to amend or change the tenancy agreement must be done in writing in compliance with the Act.

Counsel submits whether there was a side agreement that a tenant could have the use of a locker, if and when one became available, that does not mean it was included in the rent, it was a service provided after their tenancy commenced.

Counsel submits tenant 1 did not receive a storage locker until one year after the tenancy commenced and tenant 2 did not receive a storage locker until four years later.

Counsel submits the information sheets the tenants completed are not relevant and do not form any agreement. Counsel added that this was simply information the landlord was using when in the process of purchasing the property.

Counsel submits that tenant 1 and 3, had a family relationship with the property manager at the time and it is more likely than not given on this relationship. Counsel submits the tenants could have had the property manager attend the hearing to provide testimony on this issue as this is their family.

Counsel submits the onus is on the tenants to prove there was an agreement that the storage lockers where included in the rent and they have not provided any evidence other than hearsay.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 1 of the Act defines "tenancy agreement" as follows;

> "tenancy agreement" means an agreement, whether written or oral, express, or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Under section 13 of the Act, the landlord must prepare in writing every tenancy agreement entered into after January 1, 2004. Under section 14(2) of the Act, a tenancy agreement may be amended to add, remove, or change a term.

Section 1 of the Act defines "rent" as follows:

> "rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess

a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

(a) a security deposit;

(b) a pet damage deposit;

(c) a fee prescribed under section 97 (2) (k) *[regulations in relation to fees]*;

[my emphasis added]

Section 97(2)(k) of the Act provides that regulations may be created to deal with fees a landlord may charge a tenant. Section 7 of the Residential Tenancy Regulations provides for non-refundable fees a landlord may charge a tenant.

Section 7(1)(g) of the Regulations provides that a landlord may charge a tenant a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

[my emphasis added]

In the case before me, I am satisfied that storage lockers are not required to be provided to the tenants under their respective tenancy agreements. I make this determination based on the following finding.

The landlord entered into written tenancy agreements with each of the tenants under their own agreement in compliance with section 13 of the Act. The written tenancy agreements clearly indicate storage is not included in the rent. Further there is nothing in the written addendums attached to those agreement, that indicate that storage is a service that would be provided under the agreement at a later date, which would have been reasonable if this was the actual agreement at the time.

Further, there were no amendments to the written tenancy agreements to add storage as a service provided under the agreement, which is a requirement under section 14(2) of the Act. While I accept some parties do not enter into a written tenancy agreement and

then we must consider a verbal agreement; however, that is not the case before me, as each of these tenancy agreements are in writing and sets out the terms. This means any changes to the written agreement must be in writing. There were no amendments to these agreements.

Although I accept the tenants' witness JK provided testimony; however, it was not relevant as they have no direct knowledge of the conversation around the tenancy agreements that are subject to this hearing.

In this matter, tenant 1 did not gain access to a storage locker until May 2019, one year after their tenancy commenced, I find it unreasonable that this would be included in the rent, when there is no supporting document to support this. Although I accept the tenant obtained a storage locker, I am not satisfied that the storage locker was actually provided by the landlord and even if it was, it was not a service required under the tenancy agreement. Any subsequent agreement for service may be made with the landlord; however, it does not change the terms of the original written tenancy agreement and the landlord may or may not charge a fee under Section 7(1)(g) of the Regulations , which in this case no fee was paid.

Furthermore, tenant 1 gained access to **two** storage lockers which I find troubling when there is a limited supply and certainly there was never any prior agreement to provide two storage lockers. I also note the storage lockers were obtained the same month that the landlord took possession of the property. This leads me to believe the tenant was simply taking advantage of the situation. I find tenant 1 has failed to prove storage was included in the rent.

Tenant 2 did not gain access to a storage locker until April 2019, four years after the tenancy commenced. I find it unreasonable that this would be included in the rent when the tenant did not exercise any right to storage earlier, if it truly was a service to be included in the rent.

Furthermore, tenant 2 gained access to the storage locker in April 2019, just prior to the landlord taking possession of the property. This leads me to believe the tenant was simply taking advantage of the situation. I find tenant 2 has failed to prove storage was included in the rent.

Tenant 3 evidence was that they gain access to a storage locker at the time they entered into their tenancy agreement in November 2017. This is not consistent with their tenancy agreement as it shows no storage was provided. Furthermore, this is inconsistent with

the evidence of tenant 2 who said to have waited four years, to obtain a storage locker which was not until March/April 2019. While the tenant 3, may have gained access to a locker in November 2017, I find it was more likely than not given because tenant 3 received special treatment, as the property manager was the tenants grandfather or alternatively obtain improperly. I find it would be unreasonable for the property manager to give tenant 3 a storage locker if in fact there was a waiting list, which tenant 2 was on. I find tenant 3 has failed to prove storage was included in the rent.

In addition to the above, the tenants provided no supporting evidence to prove their version that storage was included in the rent. GM is the named landlord in their tenancy agreements, and those agreements were transferred to the new purchaser, the landlord subject to the hearing. I find if there was any merit to the tenants' application, they would have had GM attend the hearing and provided testimony, or alternative provided an affidavit for my review and consideration, which was not done.

GM is the father and grandfather of tenant 1 and 3, and the whereabouts of GM, was known. Further tenant 1 stated at the hearing that GM did not want to get involved as he had retired. That further, leads me to believe that GM was relying upon the original tenancy agreement that he signed, as his role was to accurately record these agreements.

Having made the above findings, I find the tenants are not entitled to storage under the terms of their written tenancy agreement. I find the landlord is not required to give notice to end this service under the Act. The tenants are not entitled to any rent reduction as this was not included in the rent. Therefore, I dismiss the tenants' respective applications without leave to reapply. As the tenants were not successful, they are not entitled to recover the cost of the filing fee.

Although I had not decided on the merits of the case at the conclusion of the hearing, the tenants agreed that they would remove their belongings from the storage locker no later than June 30, 2020. Should those belongings remain after this date, I find the landlord is entitled to consider them abandon.

Conclusion

The tenants' respective applications are 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: June 19, 2020

Residential Tenancy Branch