Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property Management Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **PSF, OLC, FFT**

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

- An order to provide services or facilities required by a tenancy agreement or law pursuant to section 62;
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The tenant attended the hearing, and the landlord was represented at the hearing by property manager, LB ("landlord"). As both parties were present, service of documents was confirmed. The landlord acknowledged receipt of the tenant's Application for Dispute Resolution and the tenant acknowledged receipt of the landlord's evidence. Both parties stated they had no concerns with timely service of documents and were ready to proceed.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the *Act*.

Preliminary Issues
At the commencement of the hearing, I noted that the tenant's Application for Dispute Resolution did not indicate a unit number for the rental unit. I also noted that the landlord's name on the application differed from the name appearing on the documents

submitted by the parties. The landlord's representative provided the full legal name of the corporate landlord and that name is recorded on the cover page of this decision. I have amended the tenant's Application for Dispute Resolution to indicate the unit number of the rental unit and to reflect the proper legal name of the corporate landlord in accordance with section 64(3) of the *Act*.

The tenant advised me that the issue of parking was initially included in her Application for Dispute Resolution, however she does not have any dispute with the landlord regarding parking. The tenant's application with respect to parking was dismissed without leave to reapply at the commencement of the hearing.

Issue(s) to be Decided

Should the landlord be required to uphold the storage agreement, or can the landlord unilaterally terminate or modify it?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant gave the following testimony. She began living in the building on May 1, 2012 but moved to the current suite she occupies on October 1, 2013. At that time a new tenancy agreement was drawn up and signed by the parties. Copies of both tenancy agreements were provided as evidence. The tenant testified she understood that storage was free from when she first moved into the building as she has always had a storage locker. After an issue arose with the landlord regarding access to the storage locker, she and the landlord got into a dispute around whether the tenant was entitled to the storage locker.

The tenant approached the landlord asking for a copy of the addendum to tenancy agreement granting her storage. A copy of the addendum giving the tenant use of a storage locker at a monthly rate of $0.00 per month, effective March 2019 was provided as evidence. The addendum is signed by both the landlord and the tenant. The tenant points out clause 7 of the addendum which reads:

7. *No modification to this agreement will be valid unless in writing and signed by both parties.*

During the hearing, the tenant acknowledged the landlord has the right to increase the fee charged for storage but that the increase in fees should be in line with annual rent increases. In the alternative, if the landlord wants to discontinue providing the storage locker, the landlord should serve the tenant with a proper form RTB-24 [Notice Terminating or Restricting a Service or Facility] and reduce the tenant's rent accordingly.

The landlord gave the following testimony. He does not know any of the tenants he manages personally, since he manages over 700 units. When the tenant made enquiries regarding storage, he didn't know the tenant had an existing storage agreement. There was no indication on the original tenancy agreement signed in 2012 or the subsequent one signed in 2013 that the tenant had a storage locker. Both of those tenancy agreements were signed with a different management company. He couldn't locate this tenant's storage agreement addendum signed in March 2019 and advised the tenant she could have a locker at a cost of $15.00 per month.

The landlord was subsequently able to locate the storage locker addendum signed with the tenant and provided her with the copy. The landlord notes on the addendum clauses 1 and 4:

1. *Either party can terminate this Agreement by giving a 30-day written notice to the other party before the first day of the month, for effect on the last day of the following month. Verbal notices will not be accepted.*

4. *The Tenant agrees to use the Locker in compliance with all rules, regulations and or special instructions that may be issued by the Landlord from time to time. Any non-compliance with any laws, legislation, rules, regulations or special instructions may result in immediate termination of this Agreement at the sole discretion of the Landlord.*

The landlord testified that he exercised clause 1 of the addendum and sought to terminate the agreement with the tenant on April 26th by email. A copy of the email from the landlord's director of residential property management to the tenant was provided as evidence. In the email, the landlord's director writes, *"… You have been issued a 30-day notice to vacate that locker as per the agreement that we have between yourself and [landlord]. That means we expect items to be out of our locker by May 31st 2021 or an amendment to the agreement to bring your rate up to market of $15. Your tenancy*

agreement clearly shows what was included in your rental rate and unfortunately it was not a storage locker."

The landlord testified that the reason the landlord wanted the locker back was because they wanted to repurpose it for the maintenance technician. The landlord testified that the tenant and the landlord could no longer proceed amicably.

Analysis

In March of 2019, the parties entered into the storage agreement setting out terms whereby the tenant could have possession of a described storage locker. The parties are bound by the terms set therein.

In this case, there are competing terms in the storage locker agreement that appear to contradict one another regarding the parties' ability to modify or terminate the agreement. They are 1 and 7:

1. *Either party can terminate this Agreement by giving a 30-day written notice to the other party before the first day of the month, for effect on the last day of the following month. Verbal notices will not be accepted.*
7. *No modification to this agreement will be valid unless in writing and signed by both parties.*

With respect to clause 4 of the agreement, the landlord did not allege that the tenant was in non-compliance with any laws, legislation, rules, regulations or special instructions that would cause the landlord to forever terminate the agreement. I note specifically the email on April 26th invites the tenant to continue to use the locker at a fee of $15.00 per month.

On April 26th, the landlord sought to modify the "no payment" storage locker agreement by effectively terminating it and replacing it with an agreement where the tenant is to pay $15.00 per month. This action appears to invoke clause 1 of the agreement but it ignores clause 7, since the landlord did not have the tenant's agreement to the modification in writing.

In *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator),* 2007 BCSC 257, Justice Williamson emphasized the *Act* is intended to provide protections for tenants from actions by landlords, save and except in certain circumstances. Although that decision dealt with whether a landlord could end a tenancy to perform renovations, the same principles apply here.

> [11] I start from the accepted rules of statutory interpretation. I conclude that the ***Act*** is a statute which seeks to confer a benefit or protection upon tenants. Were it not for the ***Act***, tenants would have only the benefit of notice of termination provided by the common law. In other words, while the ***Act*** seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in that benefited group: See ***(Canada Attorney General) v. Abrahams***, 1983 CanLII 17 (SCC), [1983] 1 S.C.R. 2: ***Henricks v. Hebert***, [1998] B.C.J. No. 2745 (QL)(SC) at para. 55:
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> > I think it is accepted that one of the overriding purposes of prescribing statutory terms of tenancy, over and above specifically empowering residential tenants against the perceived superior strength of landlords, was to introduce order and consistency to an area where agreements were often vague, uncertain or non-existent on important matters, and remedies were relatively difficult to obtain.

The *Residential Tenancy Act* provides some protection to tenants in situations where there is an unequal power balance between the parties. The storage agreement signed by the parties in March of 2019 appears to be an example of a landlord commanding the majority of the control in the agreement while offering the tenant none. I find clause 1 of the storage agreement, when read in conjunction with clause 7, cannot stand alone and allow the landlord to unilaterally terminate the agreement without some benefit to the tenant.

I do not accept the landlord's reasoning for terminating the agreement so that the maintenance technician could use it, since the email of April 26th says that the tenant could continue to use it for a fee of $15.00 per month. I find the landlord's attempt to terminate the storage agreement and replace it with one where the tenant is to pay $15.00 per month is arbitrary and confers absolutely no benefit to the tenant.

Contra proferentem also known as "interpretation against the draftsman", is a doctrine of contractural interpretation providing that, where a promise, agreement or term is ambiguous, the preferred meaning should be the one that works against the interests of the party who provided the wording. I find the ambiguity in the language of the storage agreement must be viewed in favour of the tenant and I order that the agreement continue as it was originally drafted. The tenant is to continue to have use of the

storage locker for the monthly fee of $0.00 until the tenancy ends in accordance with the *Act*.

The tenant seeks an order that the landlord reduce her rent if the storage facility is to be either taken away from her or if she should choose not to continue to use it. The storage locker agreement and the associated fee is governed by section 7(1)(g) of the *Residential Tenancy Regulations* since the storage locker facility is not a facility that is required to be provided under the tenancy agreement. As the fee (zero) is collected separate and apart from the rent pursuant to section 7(1)(g) of the Regulations, there would be no affect on the payment of rent, just the storage locker fee. In other words, there would be no reduction on the tenant's rent if the storage agreement were to end. Likewise, the landlord would not be required to serve the tenant with a form RTB-24, since the landlord is not restricting or terminating a service or facility under the tenancy agreement.

As the tenant's application was successful, the tenant is entitled to recovery of the $100.00 filing fee for the cost of this application. Pursuant to the offsetting provisions of section 72, the tenant may deduct $100.00 from one single payment of rent due to the landlord.

Conclusion

The tenant's application seeking an order that the landlord provide a service or facility (parking) is dismissed without leave to reapply.

Pursuant to section 62 of the *Act*, the tenant is to continue to have use of the storage locker for the monthly fee of $0.00 until the tenancy ends in accordance with the *Act*.

The tenant may deduct $100.00 fro one single payment of rent due to the landlord.

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 29, 2021

Residential Tenancy Branch