



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O, FF

Introduction, Procedural and Preliminary Matters

This hearing was convened as the result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act (Act)*. The landlord applied for "Other" relief and to recover the cost of the filing fee.

The landlord's agent (agent) and the tenant, MS, attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The evidence shows that the residential property was sold and ownership changed in January 2021. The current landlord's agent represents the new owner.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing 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, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

At the outset of the hearing, the agent was informed that I declined to accept their application for dispute resolution, pursuant to section 59(1) of the *Act*. I determined by review of the application and both parties' documentary evidence that the application does not disclose a dispute that may be determined under this Part of the *Act*.

More specifically, the landlord wrote in their application, under the heading "I want something else not listed above", that they want the tenant to comply with the landlord's request to remove their items from the common area closet.

The landlord's own documentary evidence, as well as the tenant's documentary evidence, confirm that the tenants have had exclusive use of this closet outside their rental unit door for storage and the front garden space since the tenancy began on July 1, 2009. This evidence was a letter from the previous owner of the residential property, who owned the building for 10+ years of the tenants' tenancy stating as follows:

The previous owner verbally indicated to us that exclusive use of the storage closet and front garden space were included in the rent and the tenancy agreement for Unit 101, and this never changed during the time we owned the building.

While the landlord did not make a request for the same in their application, another major issue between the parties was the landlord's intent to make the garden space in front of the tenants' rental unit a common area. I therefore have referred to this matter in the balance of this application.

I informed the agent that they failed to submit any evidence that the tenants have violated the *Act*, the Residential Tenancy Regulation (Regulation), or their tenancy agreement. The undisputed evidence was that the tenants have always used the hallway closet for storage and the front yard for personal space, exclusively, since July 1, 2009. The previous landlord stated that the storage closet and front garden space were included in the rent and tenancy agreement.

The landlord here has provided no evidence to the contrary.

I find the landlord submitted insufficient evidence to support their application. There was no evidence the tenants have violated their obligations under the *Act*, Regulation, or tenancy agreement.

It appears the landlord is removing essential or non-essential services or facilities. However, there was no evidence that the landlord has not taken the steps required under the *Act* to do so.

Due to insufficient evidence, I dismiss the landlord's application, 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: September 27, 2021

Residential Tenancy Branch