



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PAUL Y MANSION, PROSPERO INTERNATIONAL REALTY
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PSF RR FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of \$125 as a rent reduction to cover the cost of being charged for a storage locker, for an order directing the landlord to provide services or facilities agreed upon but not provided and to recover the cost of the filing fee.

The tenants, an agent for the landlord, SK (agent) and a building manager for the landlord, RM (building manager) attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service of documentary evidence during the hearing. I find the parties were sufficiently served as a result as both parties confirmed having been served with documentary evidence and having the opportunity to review that evidence prior to the hearing.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties.

Issues to be Decided

- Should the landlord be directed to provide services or facilities under the Act?
- Are the tenants entitled to a rent reduction under the Act?

- Is the tenant entitled to the recover of the cost of the filing fee under the Act?

Background and Evidence

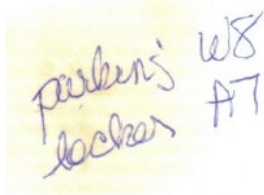
A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 1, 2014 and converted to a month-to-month tenancy after January 31, 2015. Monthly rent was originally \$1,850 and the parties confirmed that as of the date of the hearing, the monthly rent was \$2,172 per month and due on the first day of each month. The monthly rent does not include the monthly parking fee as parking is in addition to the monthly rent.

Within the application, the tenants write the following:

The landlord's Agent sent notice that they are completing a locker audit and as well will be charging the tenants \$25.00 per month if they wish to maintain the locker. Improper notice was provided. Delivery of second notice not in compliance with the RTB.

The Landlord's Agent is being listed as a defendant here as they are the Property Managers. Prospero has shown questionable ethics and professionalism in this matter. The landlord's Agent sent notice that they are completing a locker audit and as well will be charging the tenants \$25.00 per month if they wish to maintain the locker. Improper notice was provided. Delivery of second notice not in compliance with the RTB.

During the hearing the tenants stated that they were provided a locker by a previous agent for the landlord since 2014 and in support of that was an informational document that the tenants stated was from July 25, of 2014 indicating the security code for the rental unit and in handwriting in blue ink on the top right-hand corner of the document it reads as follows:



parking's locker W8
A7

Both parties confirmed that there was no written contract between the parties confirming that the tenancy was amended to include the locker in the monthly rent. The tenants'

position is that the locker has been implied as part of the tenancy by not being charged for the use until receiving a demand letter recently from the landlord.

The agent confirmed that the landlord is taking inventory of the lockers and intends to charge \$25 for the use of the lockers. In an email the tenant writes to the landlord as follows:

Please find enclosed the information you requested in regards to our assigned storage locker in the building. I am a little perplexed that your office does not fully understand the Residential Tenancy Act here.

After returning home from holidays and receiving your notice, I have done some further investigating to see if my knowledge of the Act and Common Law was correct. I many discussions with the Residential Tenancy Board, Landlord BC and colleges in the industry, your notice does not comply with the act. I recommend that you look at the Act as well as common law and how it applies to this situation.

First of all, you would be required to serve a minimum of 30 days notice to the tenants in regards to your proposed change. Secondly, depending on the tenure of the tenant(s) and the fact that they have been assigned a storage locker common law and the act would confirm that it is implied that the storage locker forms part of the residential agreement. As this is a nonessential component of the rental agreement you have the option to make changes, however, you must provide a minimum of 30-days written notice of the change and as well must reduce a tenant's rent by the cost now associated with the change. None of which is implied or stated in your notice dated July 1, 2022.

We have been a tenant in the building since August 1, 2021 and have been assigned and used the storage locker assigned to us by your office (A7) since we moved into the building.

We would like to have a discussion in regards to the above-noted manner before making a decision to move forward with filing a dispute with the Residential Tenancy Board. Our preference is to resolve this direct with Prospero and if not able to do so we will then elect to file a dispute resolution with the Residential Tenancy Board.

As we are currently set up on your PAP monthly payment plan, note that you only have permission to pull the rent in the amount of \$2,130.00 plus parking of \$35.00 per month. Your office does not have approval from either myself or Todd to pull any additional funds. If your office, for our August rent tries to pull any additional funds from our account you would be in violation of the PAP agreement.

Food for thought: as I work in the industry and have had several years of experience, would it not have been more fluid to change your policy in regards to the storage lockers and then charge the new incoming tenants if they then wish to obtain a storage locker? This would then not upset the longer-term tenants of the property. Over the last week and a bit, I have heard much chatter when in the elevator and seen some notes around the property. I am sure that you have had a lot of backlash in regards to this matter.

I as a property manager have implemented additional charges to tenants over the years but have never had any backlash as the existing tenants in the building were grandfathered and the new policy/charges were attached to new incoming tenants. Sometimes common sense does prevail.

Both Todd and I look forward to hearing back from you in short order. Depending on the outcome of our conversation it will dictate our next move.

Yours truly,

The building manager responded to the tenants after a reminder from the tenants to respond, as follows:

Please check your TA attached and let me know if you want to keep the storage or you'll return the key.

The agent has taken the position that there is no parking or storage included in the tenancy and they are making their decision to charge \$25 based on that. The agent stated that we requested evidence, and nothing was provided.

In terms of notifying the tenants, the agent admitted that one notice does not have a 30-day timeline as required by the Act, which is the July 14, 2022 notice which reads as follows:

July 14th, 2022

To all Paul Y Mansion Residents,

Re: Storage Locker Audit – 1150 Burnaby Street, Vancouver, BC, V6E 1P2

As part of the Paul Y Mansion storage locker audit, we would like to request the assistance of all residents who have been using the lockers. Please complete the locker audit form and return it to your resident manager Rodica by **Thursday, July 28th, 2022**. There will be a **\$25.00** monthly locker fee starting in August 2022.

Please be advised any unclaimed lockers' belongings will be removed by the management company after July 28th, 2022.

Tenant Name (s): _____

Unit #: _____

Phone Number: _____

Yours truly,

PROSPERO INTERNATIONAL REALTY INC.

The building manager testified that the following letter was posted in the lobby, mail room and basement and not delivered to each rental unit in the building, as follows:

July 28th, 2022

To all Paul Y Mansion Residents,

Re: Revised Notice on Storage Locker Fees – 1150 Burnaby Street, Vancouver, BC, V6E 1P2

Pursuant to the letter, we served on July 22nd, 2022 regarding the Storage Locker Audit and additional fees of \$25.00 for the Storage Locker starting in August 2022. We observed that some of the residents have expressed their concerns regarding the new storage locker fee. We understand that the Residents may want more time to decide and/or relocate their belongings. We have decided to delay the start date of implementing the storage fees to September 1st, 2022. Please note that as per the Tenancy Agreement, monthly rent does not include storage lockers. There will be an additional fee of \$25.00 for storage lockers which will be added to your monthly rent from September 1st, 2022, onwards.

If you would like to continue the usage of Storage Lockers, please fill out the information below and return it to your Resident Manager Rodica by **Wednesday, 24th August 2022**.

Storage Locker no.:

Unit no:

Monthly Rent:

Name:

Phone number:

Please be advised any unclaimed lockers' belongings will be removed by the management company after, **Tuesday 30th August 2022**.

Yours truly,

PROSPERO INTERNATIONAL REALTY INC.

The landlord is of the opinion that section 27(2)(a) of the Act only requires that 30 days' written notice has to be given. The tenants reminded the agent and building manager during the hearing that section 27(2)(a) of the Act also requires the notice also states under subsection (b) as follows:

(b) 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.

I will address how the notice was provided to the tenants in the building later in this decision.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

As the tenants described an implied waiver during the hearing, I will determine whether “estoppel” applies in this matter. Estoppel is a rule of law that states when person A, by act or words, gives person B reason to believe that a certain set of facts upon which person B takes action, person A cannot later, to their benefit, deny those facts or say that their earlier act was improper. In effect, estoppel is a form of waiver, when person A does not enforce their rights and person B relies on this waiver.

In the matter before me, I find that the tenants have clearly established a pattern of being granted a storage locker in 2014 and that they have not been charged for that storage locker (\$25 per month or otherwise) until being notified of an inventory being conducted by the landlord in July of 2022, when the landlord posted notices about a new charge of \$25 per month for all lockers in the rental building. I find the evidence on a balance of probabilities shows that the landlord has consented since 2014 to the tenants having a storage locker at no extra cost and as part of their tenancy agreement. Therefore, I find the landlord may no longer enforce that the storage locker is not listed on the original tenancy agreement as part of the monthly rent, based on estoppel.

I will now address section 27 of the Act, which applies and states:

Terminating or restricting services or facilities

27 (1) 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 living accommodation, or
- (b) 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

- (a) **gives 30 days' written notice, in the approved form, of the termination or restriction, and**
- (b) **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.**

[emphasis added]

Given the above, I find the landlord has breached section 27(2) of the Act as I find they have failed to use the approved form which is RTB Form 24 as indicated below:

		Notice Terminating or Restricting a Service or Facility Residential Tenancy Act s. 27, Manufactured Home Park Tenancy Act s. 21 #RTB-24		
FORM DIRECTIONS: If you are accessing this form from the B.C. Government website, it can be filled out at a computer workstation. It can also be printed and completed by hand. If completing sections by hand, please print clearly, using dark ink. If you are completing this form at a computer, type in your response in the boxes. If you cannot immediately complete all the sections, you can print off what you have completed, and fill in the remaining fields by hand. It's important to note that you cannot save the completed form to your computer; after you complete the form, make sure you review the form for accuracy and print the number of copies you require before you close the document or shut down the program/computer.				
To the Tenant(s):				
First and middle name		Last name		
First and middle name		Last name		
site/unit #	street # and name	city	province	postal code
From the Landlord:				
First and middle name		Last name		
I, hereby give you 30 days notice that as of:		DD/MM/YYYY		
the service or facility described as:				
will be terminated/restricted as follows:				
As a result of the termination/restriction, your rent will be reduced by:				
\$	<input type="radio"/> weekly	<input type="radio"/> monthly	<input type="radio"/> Other:	
Effective	DD/MM/YYYY			
your new rent will be:	\$	<input type="radio"/> weekly	<input type="radio"/> monthly	<input type="radio"/> Other:
signature of landlord	DD/MM/YYYY			
<small>Your personal information is collected under section 26 (a) and (c) of the Freedom of Information and Protection of Privacy Act for the purpose of administering the Residential Tenancy Act. If you have any questions regarding the collection of your personal information, please call 604-660-1020 in Greater Vancouver; 250-387-1602 in Victoria; or 1-800-665-8779 elsewhere in B.C.</small>				
Residential Tenancy Branch Office of Housing and Construction Standards #RTB-24 (2021/03)		Please see page 2 for important information		Page 1 of 2

This form is available on the RTB website located at:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/forms/forms-listed-by-number>

Given the breach of the landlord, I make the following orders against the landlord pursuant to section 62(3) of the Act:

1. **I ORDER** that the landlord must not deduct \$25 for a storage locker until a proper RTB Form 24 has been served on the tenants at their rental unit address and have waited for the full 3 months' notice has lapsed after the time in which the tenants have been properly served pursuant section 90 of the Act.
2. **I ORDER** that once the landlord has served an approved RTB Form 24 for the storage locker described in 1 above and the waiting period has elapsed, if the landlord charges the tenants an amount (eg. \$25 per month) for the storage locker that the landlord must then immediately apply a matching rent reduction (eg. \$25 per month) to offset any cost to the tenants for each month. The rent reduction will continue for each month that the landlord decides to apply a charge to the tenants for the storage locker.
3. **I ORDER** the landlord not to rely on posting form letters in the lobby, mail room or basement **when the Act requires an approved form**. Form letters are for informational purposes only and **do not replace approved forms under the Act**.

As the tenants' application had merit, I grant the tenants the recovery of the \$100 filing fee. **I authorize** the tenants a one-time rent reduction in the amount of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

I caution the landlord not to violate section 27(2) of the Act in the future.

Conclusion

The tenants' application is successful.

I have made 3 orders against the landlord as indicated above. Should the landlord fail to comply with any of the orders for the remainder of the tenancy, the tenants may apply for further remedy under the Act including monetary compensation.

The tenant has been authorized to deduct \$100 from a future month of rent in full satisfaction of the return of the filing fee as indicated above.

In addition to the above, the tenants may also contact the RTB Compliance and Enforcement Unit (CEU) for enforcement-related concerns. The RTB CEU website is located at:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/compliance-and-enforcement>

The landlord has been cautioned not to breach section 27(2) of the Act in the future.

This decision will be emailed to both parties at the email addresses confirmed by the parties during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 6, 2023

Residential Tenancy Branch