



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding PACIFIC COVE PROPERTIES and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      PSF, OLC, FFT

### Introduction

On October 26, 2022, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) for an order for the Landlord to provide services or facilities required by the tenancy agreement or the *Act*, for an order for the Landlord to comply with the *Act*, and to recover the filing fee paid for this application. The matter was set for a conference call.

The Tenant and their advocate (the “Tenant”) as well as an Agent for the Landlord (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Should the Landlord be ordered for the Landlord to provide services or facilities required by the tenancy agreement or the *Act*?
- Should the Landlord be ordered to comply with the *Act*?
- Is the Tenant entitled to the recovery of the filing fee of their application?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on August 1, 2019, as a one-year fixed term tenancy, that rolled into a month-to-month at the end of the initial fixed term. Rent in the amount of \$1,600.00 is to be paid by the first day of each month and the Landlord collected a security deposit of \$800.00. Both the Landlord and the Tenant provided a copy of this agreement into documentary evidence.

The Landlord testified that a new property manager started working at the rental property, who conducted an audit of the parking and storage locker usage on the property, on October 3, 2022. The Landlord testified that the results of that audit showed that the Tenant was using the parking area and a storage locker without the consent of the Landlord and without paying the associated parking and storage fees. The Landlord submitted a copy of the parking audit notice sent to the Tenant and 14 pictures into documentary evidence.

The Landlord testified that they advised the Tenant in writing that if they wished to continue using the parking and storage facilities, they would have to pay \$25.00 per parking spot and \$20.00 for a storage locker. The Landlord submitted five copies of letters, into documentary evidence.

The Tenant agreed that they are using two parking spaces in the parking area of the rental property and one storage locker. The Tenant testified that they have been using the parking area for their vehicles and a storage locker on the property since 2019 when their tenancy began and that the Landlord never mentioned that they were doing anything wrong before October 2022.

The Tenant testified that it was their understanding that the use of the parking lot and storage had been included in their tenancy from the start, and that the previous manager and the Landlord's Agent, in attendance in these proceedings, were all aware that the Tenant was using these facilities for years.

The Landlord agreed that it wasn't until a new property manager started working for the Landlord that it was noticed that the Tenant was using the parking and storage facilities on the rental property without paying for them.

The Tenant testified that they do not believe they should have to pay an extra charge for using the parking lot and a storage locker as they have been included with their tenancy for years. The Tenant submitted that the Landlord has never required them to pay for their use of these facilities before, and that they believed these facilities were included in their tenancy.

The Landlord testified that there is no proof that the Tenant had been using the parking lot and storage area throughout their whole tenancy. The Landlord, when asked, testified that an audit of the parking area and storage area usage had not been conducted before October 2022.

The Landlord testified that parking and storage were not clearly included in the tenancy agreement, and therefore the Tenant is required to pay the requested amounts for the use of these facilities.

### Analysis

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

In this case, the Tenant is disputing the Landlord's demand to charge them additional fees for their use of two parking spots and a storage locker on the rental property. The Landlord has submitted that parking and storage were clearly not included in the tenancy agreement and that the Tenant must pay an additional charge if they wish to use these facilities on the rental property. The Tenant has submitted that they have used these facilities without additional charge for years and that the Landlord can not now demand these changes so late into the tenancy.

Section 6(3) of the *Act* provides that a term of a tenancy agreement is not enforceable if, the term is not expressed in a manner that clearly communicates the rights and obligations under it.

***Enforcing rights and obligations of landlords and tenants***

**6** (1) *The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.*

(2) *A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58*

(1) *[determining disputes].*

(3) *A term of a tenancy agreement is not enforceable if*

*(a) the term is inconsistent with this Act or the regulations,*

*(b) the term is unconscionable, or*

*(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

After a careful review of the tenancy agreement, I find that sections 7, 28 and 29 of the tenancy agreement speak to storage and parking.

I have reviewed section 28 of the tenancy agreement, regarding storage, and noted that this section does not mention that a tenant would required permission from the Landlord for the use of the designated storage areas, nor does it mention that an additional payment would be charged for the use of designated storage areas on the rental property.

I have also reviewed section 29 of the tenancy agreement, regarding parking, and noted that this section does indicate that a tenant needed to obtain permission in writing from the Landlord to park vehicles in the parking area on the rental property. However, nowhere in the tenancy agreement does it clearly state that there would be an additional charge to park vehicles in the parking area of the rental property.

I acknowledged that section 7 of this tenancy agreement does includes a blank space for additional fees to be recorded; however, I note that the "Parking Fee(s)" and "Other Fee(s)" sections were left blank in this tenancy agreement.

After reviewing this tenancy agreement, I find the rule of *contra proferentem* applies in this case. Contra Proferentem is a rule used in the legal system when interpreting a contract, which basically means that any ambiguous clause contained in a contract will be interpreted against the party responsible for drafting the clause.

As it was the Landlord who drew up the tenancy agreement, I find that they bore the obligation to ensure that the terms therein were certain, and the obligation of the parties were well-defined. Therefore, the ambiguity in the terms set out in sections 7, 28 and

29, must be resolved against the Landlord who drafted this tenancy agreement. Therefore, as the Landlord did not clearly indicate that an additional cost would be charged for the use of storage and parking on the rental property, I find that the Landlord cannot now charge the Tenant for the use of these services.

Furthermore, I also find that the principle of Estoppel applies in this case. Estoppel is a legal doctrine which holds that one party must be strictly prevented from enforcing a legal right to the detriment of the other party if the first party has established a pattern of failing to enforce this right, and the second party has relied on that conduct and has acted accordingly.

In this case, the Landlord failed to request payments from the Tenant or demand that the Tenant seek permission before their use of the parking and storage facilities for over three years. I find that the Landlord's failure to request payments or require permission for the use of parking and storage for the first three years of this tenancy amounts to estoppel by conduct. The Landlord's actions of not requesting payments towards the use of these facilities or requiring the Tenant to gain permission for their use, for such a long period of time, gave the Tenant the impression that they had permission to use these areas and were not responsible for any additional cost to use the parking area and a storage locker on the rental property during their tenancy.

For these reasons, I find that the use of two parking spots and a storage locker are included with the rent under this tenancy agreement, at no additional cost to the Tenant.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in this application, I find that the Tenant is entitled to the recovery of the filing fee they paid for these proceedings. I grant permission to the Tenant to deduct this \$100.00 award from a future month's rent.

Conclusion

I find that the use of two parking spots and a storage locker are included with the rent under this tenancy agreement.

I grant the Tenant permission to deduct **\$100.00** from a future rent payment, in the recovery of the filing for they paid for these proceedings.

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: March 17, 2023

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Residential Tenancy Branch