Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, LRE, OLC, FFT

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancelation of a Notice of Rent Increase pursuant to section 43;
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The tenants are referenced in the singular.

Preliminary Issue: Joined Applications

At the outset, the parties requested that the landlord's application (scheduled for a later time, file number referenced on the first page) and the tenant's application be joined and heard together. Both parties acknowledged service of all documents filed as evidence by the other party in both proceedings.

The Rules of Procedure state as follows:

> 2.10 Joining applications
>
> Applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria:
>
> a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
> b) whether all applications name the same landlord;
> c) whether the remedies sought in each application are similar; or
> d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

The parties stated that both applications related to the same tenancy agreement between them, concerned the same unit, dealt with the same issues, and involved the same considerations of fact.

Upon hearing the submissions and consent of the parties, I find it would be fair, efficient and consistent with the dispute resolution process to hear the two applications together.

Accordingly, I joined the two disputes. I amend the proceedings accordingly.

The hearing proceeded on both applications. My Decision is for both applications.

Issue(s) to be Decided

Is the tenant entitled to the following:

- Cancelation of a Notice of Rent Increase pursuant to section 43;
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

Background and Evidence

The issue between the parties concerns a storage unit in a separate building on the property in which the unit is located. The tenant claimed they were granted the use of the storage unit as part of the tenancy although it is not specifically addressed in the agreement.

The landlord claimed they allowed the tenant use of the storage unit on a temporary basis only. The landlord now wants to charge for the storage unit, share it, or require the tenant to move their belongings out. The landlord is

permitted to do this as the storage locker is not included in the tenancy. The landlord requests outstanding rent.

Tenancy

The parties agreed the tenant rents an apartment from the landlord beginning on July 1, 2018. Rent is $1,112.00. The tenant provided a security deposit and pet deposit each in the amount of $500.00.

A copy of the tenancy agreement was submitted which is silent on the use of the storage unit.

Tenant's claim

The tenant testified as follows.

1. The storage unit is in a separate shed on the property.

2. The tenant asked the landlord about storage before they committed to renting the unit and were told they could have the use of the storage unit.

3. Having a storage unit was important to the tenant and a perquisite to their signing the agreement.

4. When the tenant moved in, the movers moved some items directly into the storage unit. Two movers submitted supporting written statements as evidence. So the storage unit was occupied by the tenant from the first day of the tenancy.

5. The relationship between the parties was pleasant and cordial.

6. This changed on August 23, 2022, when the landlord told the tenant in an email she would charge $200.00 a month for the storage unit starting October 1, 2022. The landlord explained the extra cost as the rent was under market value, expenses had risen, and the allowable rent increase

was inadequate. The landlord acknowledged they were “wonderful tenants”.

7. The tenant replied on September 1, 2022. They said they were “a little shocked” to receive the landlord’s email as they were “not aware that the locker wasn’t included in the rental agreement”. They stated the increase of $200.00 was “a lot for us”. They suggested a “compromise” and outlined a 2-step proposed increase.

8. In an email of September 9, 2022, the landlord counter offered with $175.000 monthly.

9. Although the parties agreed to monthly payment for the storage unit, the tenant claimed they had no idea what they were entitled to.

10. By email of October 5, 2022 to the landlord, the tenant stated they had contacted the Residential Tenancy Board and had learned the landlord “cannot charge for a storage space that was originally given to us when we first moved in over 4 years ago as it is assumed as part of our tenancy”. The tenant said that they would be willing to pay $50.00 monthly.

11. The landlord rejected the offer and stated rent for the storage unit was $175.00 starting November 1, 2022. Alternatively, the tenant could vacate the storage unit or share it.

12. The tenant filed an Application for Dispute Resolution.

13. The tenant requested the following:

    1) A finding that the storage unit was included in the agreement at no additional cost.
    2) A finding that the claimed expense for the storage unit is an unauthorized rent increase not allowed by law.

3) An order that the landlord is not permitted to enter the storage unit without permission or notice.
4) Reimbursement of the filing fee

Landlord's Claims

The landlord acknowledged the exchange of emails referenced in the tenant's evidence.

The landlord submitted a written summary, portions of which are inserted below, and testified as follows.

1. The landlord claimed the provision of the storage unit was merely a "kindness" and was not an implied term of the agreement. There is no express term allowing the tenant free use of the storage unit.

2. "The property has a separate building housing two 6' X 11' X 7 ½' high storage lockers I had built for my personal and management use. These lockers are not and never have been included in any Tenancy Agreement under my management which began in 2008."

3. "At times since 2008 exclusive use of the second locker has been granted when not needed by management. But at no time has exclusive use been granted to any tenant or member of the public without a signed Storage Locker Rental Agreement in place separate from any Tenancy Agreement" […]

4. After the tenant moved in, "they expressed a need for a small amount of extra storage for a few oversized items that did not fit on their assigned storage shelf."

5. The tenant has requested additional permissions from the landlord, such as permission to have a pet, store a kayak and so on. "Their realm of control appears to be an issue" for the tenant.

6. “[Increased] insurance rules requiring me to move many management items from the basement works area to the storage lockers and the flooding of my home in October, 2021, and being forced from my suite for an extensive, ongoing insurance claim, still under way.”

   “I was flooded out 17 months ago, an extensive insurance claim is ongoing and a need for dry storage became an issue when I was advised I would have to move out of my suite July 2022.”

7. The RTB, “confirmed the locker was never included in their [the tenant’s] Tenancy Agreement, there was nothing in writing giving them use, exclusive or shared, they had no claim to it.”

8. “At no time have I entered their locker or threatened to do so. I have not even checked to determine if they have changed the locks.”

9. “As a single senior I manage this house as my only pension. I have been dedicated to long term stable tenancies out of my desire to service the difficult housing market in our small city and for my own need for stability and less work. I feel I have been both exceedingly accommodating, generous and kind to [the tenant].”

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the hearing, submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

Credibility

I acknowledge that the landlord disagreed with the tenant’s version of events in key aspects. Given the conflicting testimony, I have considered credibility.

A useful guide in that regard, and one of the most frequently used in cases such as this, is found in Faryna v. Chorny (1952), 2 D.L.R. 354 (B.C.C.A.), which suggests a determination of the likely version of events. That is, I must determine the facts that are in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I do not find the landlord's submissions to be persuasive. I find the landlord's suggestion that the tenant is untruthful or exaggerating to be unsupported by the evidence. The landlord wrote to the tenant in a distressed tone , expressing serious concern about personal challenges. I find it is these challenges which have inspired the request for extra rent, and not that the landlord is entitled to it.

I find the tenant's evidence to be the more credible in the circumstances. The tenant's testimony was believable, calm, and forthright. I find the tenant's recollection and recounting of the events leading to the signing of the tenancy agreement to be convincing and credible. I find it was an implied term of the tenancy agreement that the storage unit was included.

Therefore, I prefer the tenant's evidence in all respects. Where the evidence of the parties differs, I give greater weight to the tenant's version of events.

Four-Part Test

Section 67 of the Act allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

A four-part test is applied to the evidence. First, the claiming party must show that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party. Secondly, the claimant must prove there was resulting damage or loss.

Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

Terminating or Restricting Services of Facilities

Section 27 of the Act provides that the landlord may terminate or restrict the use of the storage unit, assuming it is included in the agreement, only after giving 30 days' written notice and reducing the rent by the value of the reduction.

The landlord has not submitted a written notice to the tenant under this section or reduced the rent.

Terms of a Tenancy Agreement

Section 1 states a tenancy agreement may be written or oral, express of implied, including the services and facilities.

The recollections of the parties differ as to the implied inclusion of the storage unit in the tenancy.

The landlord claims the tenant was allowed to use the storage unit after they moved in as a mere "kindness" and the use could be ended by the landlord, who could now charge rent. The landlord requested an award for unpaid rent.

The tenant claimed the landlord told them at the beginning of the tenancy that they could use the storage unit and they would not have rented the apartment without someplace to store their stuff. They relied on the landlord's promise.

The tenant submitted written statements of two movers who said they moved the tenant's possessions into the storage unit on moving day. They have used the unit undisturbed, holding the only key, for four years.

Findings

After carefully considering all the evidence, I find the tenant has established, on a balance of probabilities, that the storage unit was included as an implied term of the tenancy. Their possessions were moved into the storage unit the day they moved in, which leads me to believe the tenant had a right to do so. They have had sole possession and the only key for four years. This factor leads me to the assumption that the tenant relied on the provision of the storage unit for a significant period of time without the landlord claiming rent.

I conclude the landlord suddenly requested rent for the storage unit because of various personal and financial circumstances.

I therefore find:

1. The provision of the storage unit without additional rent is an implied term of the tenancy agreement.
2. The landlord's claim for outstanding rent for the storage unit is therefore denied.
3. The landlord must comply with the provisions of the Act concerning entry to the storage unit and restriction on services or facilities.
4. I do not cancel a Notice of Rent Increase as none was issued.
5. As the tenant is successful in their claim, they are awarded reimbursement of the filing fee of $100.00 which may be deducted from rent on a one-time basis.

Conclusion

I order as follows:

1. The provision of the storage unit without additional rent is an implied term of the tenancy agreement.
2. The landlord's claim for outstanding rent for the storage unit is therefore denied.
3. The landlord must comply with the provisions of the Act concerning entry to the storage unit.
4. I do not cancel a Notice of Rent Increase as none was issued.
5. As the tenant is successful, they are awarded reimbursement of the filing fee of $100.00 which may be deducted from rent on a one-time basis.

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: May 10, 2023

Residential Tenancy Branch