

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- an order for the Landlord to provide services or facilities required by law under section 27 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

S.C., J.P., P.H., D.S., D.E., and G.I. attended the hearing for the Tenant.

B.L. and M.K. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord acknowledged service of the Proceeding Package. I find that they were duly served in accordance with the Act.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

No evidence was received by the Residential Tenancy Branch from the Landlord. The Landlord confirmed that they did not serve or submit any evidence for consideration.

Preliminary Matters

Characterization of Claims

Although the lead Tenant in this matter characterized his claim as being for an order for the Landlord to provide services or facilities required by law under section 27 of the Act, the remaining Tenants requested an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

Despite the other Tenants characterizing their claims differently than the lead Tenant, I have determined that they are seeking the same relief as the lead Tenant and have

therefore considered their claims in the context of the lead Tenant's application for an order that the Landlord to provide services or facilities required by law.

Filing Fees

For reference, I note that a \$100.00 filing fee was paid with respect to each dispute file.

Issues to be Decided

Is the Tenant entitled to an order for the Landlord to provide services or facilities required by law?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The lead applicant in this matter, PH, has been a tenant since December 1, 2020.

The parties agreed that each of the Applicants received a Notice Terminating or Restricting a Service of Facility dated January 28, 2025, indicating that it would be effective March 1, 2025, and that as a result of the termination their monthly rent would be reduced by \$20.00.

On February 6, 2025, PH, applied for dispute resolution, seeking an order that the landlord be required to provide facilities required by law.

Specifically, PH requested that the notice permanently terminating their access to their storage locker be cancelled on the basis that the storage locker facility is a service that is essential to the Tenants' use of the rental unit, and that providing the service or facility is a material term of the tenancy agreement.

The other applicants in this matter also applied for dispute resolution shortly thereafter, seeking similar relief. A request to have their applications be heard jointly with the lead applicant was granted by the Residential Tenancy Branch.

Material Term; Essential Facility

PH said that the provision of a storage locker was critical to his decision to enter into the tenancy agreement and that when he was first considering a tenancy agreement for the rental unit 2010, he specifically inquired as to whether there was a storage locker as he does not own a vehicle, and his bicycle is his primary mode of transportation. He was informed by the Landlord that a storage locker was assigned for each unit, that this was included with his rent, and that his bicycle and any luggage could be stored there.

PH added that the provision and use of storage lockers is conceived of in the tenancy agreement itself, which states the following at term 21:

“All luggage, vehicles, or other property of the tenant, stored on the residential property, shall be kept in safe condition in proper storage areas...”

.....

“BICYCLES are only allowed to be stored in designated areas and shall not be kept, left or stored on balconies or in the hallways. They cannot be moved through lobbies, hallways or on elevators. The tenant shall be responsible for any damages, expenses or claims whatsoever resulting from the tenants failure to obey the terms of this agreement.”

PH explained that without a storage locker, any storage of his bicycle in his rental unit would be in contravention of term 21 of his tenancy agreement which requires that they only be stored in designated areas. He noted that there were no other designated areas located in or around the building for bicycle storage.

PH said the storage lockers are on the ground floor of the building with an adjacent door for transporting bicycles. PH argued that storing his bicycle in his rental unit would necessitate transportation of his bicycle through lobbies, hallways, or elevators, in contravention of term 21. He noted that the building was four stories tall.

Furthermore, PH characterized the rental units in the building as small “efficiency living spaces”, located in a building that was originally intended for occupants who are seniors, and said that there was simply no room for bike storage in his rental unit. He added that while storage of bicycles on balconies is not permitted, he does not have balcony. PH said that the storage lockers provide a significant amount of room, and that they are approximately eight feet high, six feet wide, and four feet deep.

DE submitted that she would not have entered into her tenancy agreement for the rental unit if a storage unit was not included.

FR submitted that she understood at the time that she entered into her tenancy agreement that a storage unit was included.

CM submitted that she understood at the time that she entered into her tenancy agreement that a storage unit was included.

DS submitted that provision of a storage unit was explicitly indicated by the Landlord at the time that he entered into his tenancy agreement. He said that when he became a tenant, the Landlord even took him to a specific locker, which was numbered, informing him that this would be his.

DC submitted that provision of a storage unit was a key factor that she considered at the time that she entered into her tenancy agreement.

The tenants claimed that there were no storage facilities in their neighbourhood, and that this would likely require an amount of travel that seriously impact their enjoyment of the premises.

The tenants said that the cost of a similar size commercial storage locker was in some cases as much as \$195.00. The tenants added that while they were able to obtain a quote for such storage, this did not mean that such lockers were necessarily available as there is a strong market for these facilities. Furthermore, access to commercial storage facilities is typically only available during restricted hours.

The Landlord purchased building containing the rental units in September 2024. The Landlord argued that they are not required to provide storage lockers to tenants under the terms of the tenancy agreements. Specifically, the Landlord argued that term 3 of these agreements, "Premises to be Rented", is supportive of their interpretation. The Landlord noted that this term does not reference provision of a storage locker.

The Landlord further argued that term 21 of the tenancy agreements simply references the manner in which items are to be stored, not storage lockers themselves.

The Landlord also explained while there are not any designated bike storage areas inside or outside the building, nothing was preventing tenants from locking their bicycles to exterior fixtures.

Analysis

Is the Tenant entitled to an order for the Landlord to provide services or facilities required by law?

Section 27 of the Act states that a Landlord must not terminate or restrict a service or facility if the service or facility is essential to the Tenants' use of the rental unit or providing the service or facility is a material term of the tenancy agreement.

Material Term

Residential Tenancy Branch Policy Guideline #22 explains that when considering if a term is a material term and goes to the root of the agreement, an arbitrator will consider the facts and circumstances surrounding the creation of the tenancy agreement.

I find that the Applicants have established that the storage lockers are a material term of the tenancy agreement. In reaching this conclusion, I have found the submissions of the Applicants to be credible and compelling. Specifically, I accept that the rental units are small and that the availability of additional, conveniently located, space for storage was a primary consideration at the time that they entered into their tenancy agreements.

While the Landlord insists that they are not responsible for nor are the tenants entitled to storage areas, I note that under the terms of their tenancy agreements, Tenants are required to store all luggage or other property of the tenant "in proper storage areas" and "BICYCLES are only allowed to be stored in designated areas". I find the Landlord's argument is severely undermined by this language and its provision of storage lockers to tenants.

Similarly, I find the term of the tenancy agreement restricting the movement of bicycles through lobbies, hallways or elevators strongly supports an inference that the storage lockers serve as the designated storage area for bicycles, and that the use of the storage lockers is mandatory in this regard.

The Landlord's argument that there were no designated areas for storing bicycles was further undermined by the fact of their use of storage lockers for bicycles for more than a decade by some of the tenants prior to the Landlord's purchase of the rental building. The Landlord's proposal that tenants should simply lock bicycles to an exterior fixture was not compelling, and I am satisfied that this was not PH's understanding at the time his tenancy began.

Importantly, PG #22 requires that an arbitrator consider the facts and circumstances surrounding the creation of the tenancy agreement. In this instance, I note that of the tenancy agreements provided, one was entered into in 2010, and another 2003. For this reason, I have preferred the evidence of the tenants as to their understanding at the time the tenancies were created, over that of BL and MK who have been in a Landlord relationship with the tenants for less than a year.

Essential Facility

Residential Tenancy Branch Policy Guideline #22 explains that an "essential" service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation, the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

Residential Tenancy Branch Policy Guideline #22 provides that in determining whether a service or facility is essential, an arbitrator will also consider whether the Tenant can obtain a reasonable substitute for that service or facility.

I find that the Applicants have established that the storage lockers are an essential facility.

In reaching this conclusion, I have already found that the provision of storage lockers was a material term of the tenancy agreements. I find that it is reasonable to conclude that tenants would have included consideration the storage locker in the course of determining whether it would meet their needs in terms of adequate space for their belongings. I note that the loss of the storage locker could potentially require the tenants to either discard a significant number of personal belongings which in some cases may be intrinsic to their mobility, store them in the rental unit, or store them elsewhere. I accept that the rental units are not large, and that having additional space for the storage of items is fundamental to the use of the facilities as living accommodation.

In particular, I accept that PH requires his bicycle for transportation, that storage of this in his unit is impractical, storage of it outside would not be secure, and that the loss of his storage locker would essentially result in the loss of his mode of transportation. I find that as a result, the loss of the storage locker would make the rental unit impractical as living accommodation.

I further note that the Landlord did not dispute the tenants' claim that a majority of occupants are senior citizens and that some of these people have mobility aids that would be similarly impractical to store in their rental units or offsite.

I find, on a balance of probabilities, that the tenants would be unable to obtain a reasonable substitute for the storage lockers.

In reaching this conclusion, I accept the tenants' claim that there are no storage facilities in their neighbourhood, and that accessing storage elsewhere would likely require an amount of travel that seriously impact their enjoyment of the premises.

I accept that the cost of a commercial storage locker would result in tenants incurring a significant cost and that while they were able to obtain a quote for such storage, this did not mean that such lockers were necessarily available. I also that accept that access to commercial storage facilities is typically only available during restricted hours and that this would add further add to the tenants' inconvenience.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As the Applicants were successful in their application, I find that they are entitled to recover their \$100.00 filing fees paid for this application under section 72 of the Act.

In accordance with section 72 of the Act, I authorize the Applicants to deduct \$100.00 from a subsequent rent payment in full satisfaction of the monetary award for their filing fee.

In those instances where there is more than one Applicant associated with one file number, there will only be one filing fee reimbursed for that file. For greater clarity, there will only be one reimbursement for each file number.

Conclusion

I authorize each Applicant to deduct \$100.00 from a subsequent rent payment in full satisfaction of the monetary award for their filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 21, 2025

Residential Tenancy Branch