



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OTC

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order to compel the tenant to comply with a term of the tenancy agreement. The landlord and tenant are involved in a dispute over the tenant's possession and use of a storage locker that was not included as a service or facility as part of the tenancy.

Both parties attended and each gave affirmed testimony in turn.

Issue(s) to be Decided

The landlord was seeking an order to compel the tenant to comply with the tenancy agreement by vacating and ceasing use of a storage locker in the building associated with the condominium unit being occupied by the tenant. The issues to be determined based on the testimony and the evidence are:

- Whether or not the terms of the tenancy agreement included the access to and use of a locker assigned to the occupants of the unit.
 - If not, whether the landlord can obtain an order to compel the tenant's to relinquish possession of and use of the locker in question.

Background and Evidence

The tenancy is a one-year fixed term beginning on October 1, 2008 with rent set at \$2300.00. The parties testified that when the tenancy began a tenancy agreement was signed and that the agreement made no mention of the storage locker, but that there was no mark in the check-box beside "Storage". This document was submitted into evidence. Both parties agreed that at the time the tenancy commenced, the tenants were shown a storage locker and were given the express representation that it was included as a service or facility as part of the tenancy and included in the rent. The tenants utilized the locker since the tenancy started on October 1, 2008. However, the owner of the unit evidently had no intention that the storage locker would be included in the tenancy and has instructed the tenants to remove their stored belongings. The tenants are not willing to give up the storage. Another locker offered to the tenants was found by the tenants to be unacceptable due to security concerns given the location which is known to be more vulnerable to break-ins. The parties had reached a stalemate and hoped to resolve this matter through dispute resolution.

Analysis

Section 6 of the Act states that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement and that 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]*.

Section 6(3) states that 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.** (my emphasis)

In this instance the lack of an indication beside the tick-box marked “storage” would appear to be clear. However, because the tenants were given an express indication that they were entitled to the storage locker and allowed to actually access and utilize the locker for a number of months, this representation could at most be seen as a valid and clear term in the tenancy, or could at least be seen to render the “no storage” provision in the tenancy agreement so obscure that it no longer can be considered as expressed in a manner that clearly communicates the rights and obligations under it.

That being said, even if the use of the storage locker was determined to be a valid term in the agreement, section 27 (2) of the Act still allows a landlord to 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.

In the course of the testimony during the proceedings, a mediated discussion ensued the outcome of which is the following:

The parties agree to collaborate in locating an alternative secure storage locker in the general vicinity of downtown Victoria that is comparable to the storage locker being used at present, and which the tenant finds to be acceptable.

Should the above initiative fail, the tenant’s monthly rent will be reduced in the amount of \$120.00 per month for the duration of their tenancy.

Conclusion

As the parties have reached a mutual agreement on this matter, the failure of which can be remedied by compensation under the Act in the amount specified above, this application is dismissed without leave to reapply.

March 2009

Date of Decision

Dispute Resolution Officer