



## Order under Section 130 Residential Tenancies Act, 2006

**Citation:** Eddison v Joseph-Walker, 2024 ONLTB 10920

**Date:** 2024-02-15

**File Number:** LTB-T-061658-22

**In the matter of:** 114, 20 ELSIE LANE  
TORONTO ON M6P3N9

**Between:** David Eddison Tenant

**And**

Janina Joseph -Walker Landlord

David Eddison (the 'Tenant') applied for a reduction of the rent charged for the rental unit due to:

- a reduction or discontinuance in services or facilities provided in respect of the rental unit or the residential complex.

This application was heard by videoconference on February 1, 2024.

Only the Tenant attended the hearing.

As of 9:35 AM, the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence.

### **Determinations:**

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant \$1,153.00, which represents:
  - \$1,100.00 for a rent abatement.
  - \$53.00 for the cost of filing the application.

*Evidence and Analysis*

Was there a discontinuance of a service or facility?

2. The Tenant's claim is about the discontinuance of a storage locker.
3. The Tenant testified that he viewed an advertisement for the rental unit in 2022 which stated the rent for the unit included parking and a storage locker. The Tenant stated one of the reasons he decided to rent this unit was specifically because of the storage space advertised. The Tenant testified that the walk through of the unit prior to signing the lease did not include viewing of the storage locker.
4. The Tenant submitted a copy of the tenancy agreement he signed on March 22, 2022. The lease agreement was a one-year fixed term beginning on May 1, 2022. The agreement states the monthly rent is \$2,900.00 and is inclusive of additional storage space and parking. Within the agreement there are three separate areas that refer to storage space or one locker as follows:
  - **Rental Unit** – one underground parking and one locker.
  - **Service and Facilities** – additional storage space check box marked yes.
  - **Key Deposit** – The tenant will pay a refundable deposit of \$200 to cover the cost of replacing the keys.....[for] main entrance door key, mailbox key, garage door opener, locker key.
5. The Tenant testified that when he moved into the unit he texted the Landlord to inquire which parking spot he should use and also where the storage locker was located. The Landlord responded to the Tenant stating that there is no storage locker at which point the Tenant replied that the locker is in the lease agreement. Copies of these texts were submitted by the Tenant.
6. The Tenant emailed the Landlord again on May 5, 2022, reiterating that a locker was listed in the rental unit advertising as well as in the signed lease agreement. The Tenant testified that following this email he had a telephone call with the Landlord. The Tenant stated the Landlord advised the leasing agent made an error in both the advertisement and the lease agreement and that no locker is available to the Tenant.
7. The Tenant submitted a further email from the Landlord dated May 10, 2022, wherein the Landlord states: "Please let me know once you have rented the storage unit and the actual cost of the unit so I can send the information to the agent so that she can reimburse you." The Tenant responded to this by email on May 11, 2022, stating that he does not agree with a temporary payment and would like a rent reduction as the rent agreed upon included a storage locker.

8. The responding email from the Landlord was received by the Tenant on the same day and was submitted at the hearing. The Landlord states:

I will not reduce the rent because of the error of the agent. She has agreed to compensate you for 1 year storage rental and I think that is fair. Please give me your storage rental contract and I will forward the same to the agent so she can provide the refund to you....

9. Pursuant to section 130(1) of the *Residential Tenancies Act, 2006* ('the Act')

A tenant of a rental unit may apply to the Board for an order for a reduction of the rent charged for the rental unit due to a reduction or discontinuance in services or facilities provided in respect of the rental unit or the residential complex.

10. Storage facilities are included under section 2(1) of the Act which sets out what can be considered a service or facility as contemplated by s. 130(1).
11. Based on the testimony and evidence presented, I find there was a discontinuance of the storage facility which was contracted for and which was included in the monthly rent the Tenant paid.
12. It is the Landlord's responsibility to ensure the terms agreed upon within the rental contract are met. Because the Landlord delegated both the advertising of the rental unit and the drafting of the lease agreement to a leasing agent on their behalf, they are responsible for its terms. The Tenant cannot be held responsible for the Landlord's failure to review what was prepared on their behalf to ensure no errors were made.

### Remedy

13. In order to quantify the remedy available to the Tenant, I must determine if the discontinuance of the storage locker is reasonable in the circumstances.
14. Section 39(3) of O. Reg 516/06 under the Act sets out the rules that apply in respect of making a finding relating to reduction of the rent charged based on a discontinuance or reduction in services or facilities and states the following:

If a service or facility is discontinued and the discontinuance was not reasonable in the circumstances, the rent shall be reduced by an amount that takes into account the following matters:

1. The value of the service or facility, including the cost to the tenant or former tenant of replacing the discontinued service or facility.

2. The effect of the discontinuance on the tenant or former tenant.

15. I do not find it reasonable for the Landlord to discontinue a service or facility because they or their agent did not exercise diligence in agreeing to the terms of the tenancy. In this case, the storage locker was referred to in both the rental advertisement and the lease itself. As stated previously, the Landlord cannot escape liability from the mistakes of someone acting as their agent. While it may have been the result of a mistake, in my view the discontinuance was not reasonable in the circumstances.
16. In terms of the effect on the Tenant, he testified that the storage locker he expected to use at the rental unit was needed to store seasonal items for himself and his young daughter. The Tenant stated the rental unit itself is quite small and has no additional space to store these items. The Tenant testified that he currently has to store these items in his parent's basement and that his parents live in Burlington. The Tenant stated the additional travel time and gas costs to retrieve items he needs from his parent's house is a burden for him.
17. The Tenant further testified that he conducted research into the average cost of a commercial storage facility in the Toronto area and that a small unit would typically cost between \$50 and \$75 per month. Since the Landlord did not attend to provide any evidence to the contrary, I am satisfied that this cost represents an approximate cost of replacing the storage locker.
18. The Tenant was induced to enter into a rental contract based on the representations outlined in the contract. The Tenant was specifically looking for a rental unit that had storage available and stated he would not have rented this unit had he known this facility was not available to him. I accept his evidence on these points. The Tenant has chosen to use space within his parent's home rather than rent a commercial storage facility but in doing so, the Tenant incurs gas costs and mileage on his vehicle not to mention the inconvenience of having to drive the distance from Toronto to Burlington every time he wishes to retrieve items.
19. Based on the effect of the discontinuance on the Tenant and the estimated cost of replacing the storage locker, in my view reducing the rent by \$50.00 to \$2,850.00 starting May 1, 2022, the day that the discontinuance or reduction first occurred, is reasonable and appropriate.
20. In addition, the Tenant is entitled to a rebate of the rent unlawfully collected by the Landlord for the period of time starting on May 1, 2022, when the facility was discontinued.

**It is ordered that:**

1. The lawful monthly rent is reduced to \$2,850.00 effective May 1, 2022.
2. The total amount the Landlord shall pay the Tenant is \$1,153.00. This amount represents:
  - \$1,100.00 for a rent rebate for the period of May 1, 2022, to February 1, 2024.
  - \$53.00 for the cost of filing the application.
3. The Landlord shall pay the Tenant the full amount owing by February 29, 2024.
4. If the Landlord does not pay the Tenant the full amount owing by February 29, 2024, the Tenant may recover this amount by deducting \$220.00 from the rent each month from March 2024 to July 2024 and \$53.00 in August 2024 until the amount is paid in full.

**February 22, 2024**

**Date Issued**

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Melissa Anjema  
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto  
ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.