



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have made application for a monetary Order for loss or damage and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions to me.

Issues to be Decided

Are the tenants entitled to rent abatement due to the loss of a service or facility?

Are the tenants entitled to towing fees paid?

Are the tenants entitled to filing fee costs?

Background and Evidence

This fixed-term tenancy commenced October 1, 2008; to convert to a month-to-month tenancy effective October 1, 2009. Rent is \$1,485.00 per month and includes parking.

The following evidence and testimony was presented by the tenant:

- on April 20, 2009 the tenants found a notice from the building strata council on their vehicle indicating that there was an oil leak that must be cleaned within five days;
- that the April 20, 2009 notice of the oil leak indicated that if the vehicle leaks oil the tenants may not park in the parkade and that the vehicle would be towed;
- that within two days the tenants cleaned up the oil and began placing paper under the vehicle, removing it whenever they use their car;
- that on May 8, 2009 their vehicle was towed away under the authority of the strata council, resulting in towing fees in the sum of \$132.00;
- that the tenants did not receive a copy of the strata rules until May 14, 2009.

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The tenant testified that they have lost use of the secure, underground parking that is to be included as part of their tenancy and that this loss represents a value of \$140.00 per month. The tenant stated the vehicle does not leak an inordinate amount and that in one day the leak would amount to a small stain approximately one inch in diameter on the paper. The tenant testified that the strata president told her that the leak poses a danger to the environment and to children. The tenant stated that children do not play in the parkade and that her vehicle does not leak a trail of oil throughout the parkade. The tenants provided photographs of the parking stall which do not indicate any damage to the floor.

The tenant stated that they are unable to make an expenditure to repair the vehicle. The tenant stated that they experience difficulty locating a parking space in the neighbourhood when they need one.

The landlord testified that once the tenants received the April 20 notice from the strata council they were aware of the need to have the vehicle repaired so that it would not leak. The landlord referenced strata rule 5.6 which states:

“Any oil, grease, leakage or spillage shall be cleaned immediately by the person responsible or by the Building Committee at the expense of the offender.”

During the hearing the landlord offered the tenant a settlement of \$287.00 which the tenant declined to accept.

Analysis

The Residential Tenancy Act (the “Act”) allows a tenant to make a claim in debt or in damages against the other party where there has been a breach of the tenancy agreement or the *Act*. When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find that the tenants properly responded to the April 20, 2009 notice. They provided photographs showing the state of their parking stall after it was cleaned and ensured that no further drops of oil were allowed to fall onto the floor of the parking stall. The April 20, 2009 notice to the tenants provided by the strata council references a bylaw that requires spills to be cleaned. I have no evidence before me that indicates the bylaws also include the banning of vehicles that leak oil from the parking area. I have no evidence before me that the tenant’s vehicle leaks an inordinate amount of oil and accept the tenant’s testimony that the daily amount leaked is very small.

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The tenants were not provided with a copy of the bylaws at the start of the tenancy but even if they had been the bylaws would not inform them that their vehicle could be towed away due to a leak of oil that is properly contained and/or cleaned. The tenants took efforts to ensure their vehicle caused no damage and, based upon a lack of any evidence to the contrary, I find that, on the balance of probabilities, their vehicle has not caused damage or left trails of oil throughout the parkade.

Strata Bylaw 19.1 provides the property manager with the authority to have a vehicle towed at the owner's expense, but the reasons for towing, outside of contravention of the parking rules, are not detailed. There is no rule banning the use of drop cloths or other means of containing leaks.

If the tenants had been made aware of the strata bylaws and, if there was a bylaw that banned the placement of a drop cloth under a vehicle, then it would be reasonable to find that the tenants must repair their vehicle or remove it from the parkade. I find that the tenants did properly respond to the April 20, 2009 notice of the oil leak and that by placing protection on the floor of the parkade, they ensured that no damage would occur to the common area. The April 20, 2009 notice indicates that a leaking vehicle is banned and will be towed; this action does not appear to be supported by the strata bylaws.

Section 27 of the *Act* provides:

- (1) A landlord must not terminate or restrict a service or facility if
 - (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may 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.

Until such time as the landlord can come to a suitable, mutually agreed upon solution to provide parking for the tenants I find that the tenants have suffered a loss of a facility which has reduced the value of the tenancy. I find that the tenants are entitled to rent abatement in the sum of \$110.00 monthly until the parking place is restored to the tenants or some other mutually agreed upon arrangement is made between the parties.

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In relation to the towing fee, I find that the tenants were aware that the return of the vehicle to the parkade, while it was leaking, could result in the vehicle being towed. Whether this was justifiable or not, it was necessary that the tenants observed this warning until a remedy could be assured. As the tenants returned the vehicle to the parkade I find that the claim for towing fees is dismissed without leave to reapply.

As the tenant's application has merit I find that they are entitled to filing fee costs.

Conclusion

I find that the tenants have established a total monetary claim comprised of the \$50.00 fee paid for this application.

I find that the tenants are entitled to rent abatement in the sum of \$110.00 per month which may be deducted from the rent owed each month. This abatement shall continue until such time as the landlord finds a mutually agreed upon solution to the tenant's lack of parking.

The tenants may deduct \$160.00 from rent owed in October 2009 to take into account that month's abatement and filing fee costs.

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: September 21, 2009.

Dispute Resolution Officer