

Decision

Dispute Codes: MNDC, RPP

Introduction

This hearing dealt with an application by the tenant for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, and an order instructing the landlord to return the tenant's personal property. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written residential tenancy agreement, the original term of tenancy was from November 15, 2005 to May 30, 2006. Thereafter, tenancy has continued on a month-to-month basis. Currently, rent in the amount of \$949.00 is payable in advance on the first day of each month. A security deposit of \$425.00 was collected on October 27, 2005. It is understood that the current landlord took over from the original landlord sometime in 2007.

The tenant seeks compensation for the cost of recovering his vehicle which was towed from a parking stall at the residential complex in October 2009. As he did not have sufficient funds to recover the vehicle from the towing company soon after it had been removed, the vehicle was not released to him. Indeed, the vehicle has still not been released to him and the funds required to recover it continue to accrue. The tenant could not confirm the original amount of the recovery charge but testified that the recovery cost is presently now in excess of \$1,100.00.

At the time when it was towed, the vehicle was parked in one of numerous stalls available to residents in the residential complex. The tenant acknowledges that the vehicle was neither licensed nor insured.

The landlord's agent testified as to her understanding that a message had been affixed to the vehicle before it was towed. She said the message cautioned the unknown owner that as the vehicle was not evidently licensed or insured, it would be removed. The person who would likely have left this message on the vehicle is no longer an employee of the landlord's.

According to the landlord's agent, no action was taken to remove the tenant's vehicle until 7 days after the above message had been affixed to the vehicle. While the tenant claims he saw no such notification on his vehicle, the parties agree that signage is posted nearby the parking stalls which caution that stalls are available for authorized parking only, and that unauthorized vehicles will be towed.

Evidence submitted by the landlord includes a copy of the written tenancy agreement. A related clause included in the agreement reads as follows:

Vehicles: Only vehicles listed in the tenancy application and no other vehicles may be parked, but not stored on the residential property. The parking areas are to be occupied by vehicles which are in operating condition, currently licensed and insured for on-road operation.

As an attachment to the tenancy agreement, the landlord's evidence also includes "Additional Terms." This document, which shows the signatures of the parties and is dated November 15, 2005, reads in part as follows:

4. PARKING

- a) Parking allowed only in your own designated parking stall. Any other vehicles will be towed at vehicle owner's expense.

b) Abandoned and non-operative vehicles or vehicles not displaying valid insurance are not allowed to park in complex parking stalls. These vehicles will be towed at vehicle owner's expense.

The landlord's agent testified that at the time of the subject incident, specific stalls were not assigned to particular residential units, but neither was there any information on the vehicle in relation to whom it belonged.

The tenant states that this is his first vehicle, and he acknowledges that after he purchased it and parked it in a stall, he never thought to inform the landlord's office.

Analysis

Based on the documentary evidence and testimony of the parties, I am unable to conclude that by having the tenant's vehicle removed, as above, the landlord breached any provision of the Act, regulation or tenancy agreement. Following from this, I find that it is not the responsibility of the landlord to take part in the tenant's recovery of his vehicle.

Conclusion

Pursuant to all of the above, the tenant's application is hereby dismissed.

DATE: January 29, 2010

Dispute Resolution Officer