Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, MNDC, OPT, RR, O

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for cause, for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act*), regulations or tenancy agreement, for an Order of Possession of the rental unit, for an Order to reduce rent for services or facilities agreed upon but not provided and other issues.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the landlord on March 02, 2011. The landlord confirmed receipt of the hearing documents. Each party submitted evidence and sent this to the other party.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Preliminary Issues

At a previous hearing the tenant had made an application to cancel a One Month Notice to End Tenancy and for an Order of Possession. As the tenant was unsuccessful at that hearing concerning these issues the One Month Notice to End Tenancy was upheld and the landlord received an Order of Possession effective on February 28, 2011. As these matters have been previously dealt with I am not permitted to either deal with these issues again or review or overturn the previous decision or Order. Therefore, these sections of the tenants' application are dismissed without leave to reapply.

With regard to the tenants application for a rent reduction for services or facilities agreed upon but not provided. As the tenancy has ended I have determined that it is not appropriate to deal with this issue pursuant to section 2.3 of the Rules of Procedure and this section of the tenants claim is dismissed without leave to reapply.

At the previous hearing the tenant also applied for a Monetary Order for money owed or compensation for damage or loss. As that matter was not dealt with at the previous hearing as it was unrelated to her application to cancel a Notice to End Tenancy the tenant was given leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this month to month tenancy started on September 01, 2010 although by mutual consent the tenant took over occupation of the rental unit around August 10, 2010. Rent for this unit was $351.00 per month and the tenancy ended on February 28, 2011.

The tenant testifies that she signed a tenancy agreement in August, 2010 and then signed a new agreement on October 15, 2010 as the landlord told her they had lost the first one. Within the tenancy agreement signed by the parties there is a clause # 23 which states:
That the landlord does not provide parking but if parking is available the tenant may only park operative, licensed and insured vehicles and that any improperly parked vehicles will be towed at the tenants' expense.

The tenant testifies that she met with the Board before the start date of her tenancy. At this meeting the tenancy and rent were reviewed, she was offered a storage locker in the interior of the building and parking. The tenant states she was asked by the Board how many vehicles she had and she states she told them three vehicles and they replied that there was adequate parking for two vehicles. The tenant states she spoke to the board about one of her vehicles

being a 26 foot motor home and that she was seeking storage for this vehicle and it would not be parked at the unit on a long term basis.

The tenant testifies that she was given parking but was not told that this parking was part of the car park for the hospital. The tenant claims she was misled by the Board because they did not disclose that they did not have authorisation to allow tenants to park there. The tenant states she parked her motor home in this car park from August 10, 2010 until October, 27, 2010. She states her two other vehicles remained on the coast at that time and she did not bring them to her new home. The tenant states her insurance did run out on her motor home at the end of August, 2010 and when she met with the landlords' agent (KS) on October 27, 2010. She states she was told by the landlords' agent that Northern Health had requested that she remove her motor home by November 05, 2010. She states she met with the operation manager from the hospital and was told she could have a five to ten day extension on that time. She states she was just about to get her motor home insured however the landlords' agent had arranged to have it towed away.

The tenant states she contacted the towing company and was told she must pay $150.00 for towing costs and $60.00 a day for storage. She claims her motor home is still stored at the towing company. The tenant states she discussed with the tow operator that she could not afford that bill and he told her he would reduce the storage fees to $2.00 per day and would charge her a monthly rate. The tenant states that she tried to get the tow operator to send her a bill but he sent one to the landlord instead. This bill shows the towing charges to be $95.00 and $2.00 per day storage for 123 days.

The tenant testifies that she was assigned a specific storage locker when she first moved into the unit. She states she did not use it for a few days and then found another tenant had put her belongings into it and locked it. The tenant claims she spoke to the landlords' cleaner who also sat on the Board and she spoke to the landlords' agent, however it was six weeks before she was given another storage locker.

The tenant seeks $1,240.00 because the landlord gave her misleading information about parking which resulted in her motor home being towed away and for the loss of the storage facility for six weeks.

The landlords' agent testifies that clause #23 is a term included in all the tenancy agreements and would have been on both agreements that the tenant signed. The landlord states it is the tenants' responsibility to ensure they read the tenancy agreement before signing it. The landlords' agent testifies that at the initial meeting between the tenant and the Board the tenant described her motor home as a 20 foot vehicle when it is actually a 30 foot motor home. He states the parking they have been granted from the hospital does not permit recreational vehicles as they are only allocated a handful of parking spaces. He states at an initial meeting they instruct new tenants and direct them to the parking but would not have approved such a large motor home for this tenant due to the agreement they have with the hospital.

The landlord also states that parking is not the landlords' responsibility and the tenancy agreement does state that they do not provide parking but if any is available the tenant may only park operative, licensed and insured vehicles. The landlord testifies that they put together four incident reports concerning the tenants' vehicle and tried to work with the tenant for five or six weeks to get her vehicle insured. (Reports included in evidence). He states if the tenant had insured her vehicle it could have been left in the parking area until the hospital operations manager came back to deal with it. The landlords' agent states when he met with the tenant on October 27, 2010 she again asked for 10 more days and he states they had to have the vehicle towed away on October 28, 2011. The landlord states he did contact the tow operator and he sent the landlord a receipt showing the actual charges being made for towing and storage. (Receipt included in evidence).

The landlords' agent testifies that there is one storage locker available for every unit. When the tenant moved in there were three available storage lockers to choose from in her designated area. If another tenant took one of these lockers the tenant still had two others to choose from. The tenants are all responsible for putting their own locks on their locker but this tenant did not do so to prevent it being taken by another tenant. The landlords' agent states that tenants may call him at any time if they have complaints or concerns, there is also a notice board for them to write any concerns, an employee works in the building three days a week and he states he is at the building everyday if tenants need to talk to him. He states the tenant should have spoken to him about it sooner she should have picked another locker and put her belongings in it and locked it but she failed to do so.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. The tenancy agreement does contain a clause relating to parking and it is a tenant's responsibility to ensure she is aware of the terms and conditions in a tenancy agreement prior to signing it. The tenant argues that she was misled by the landlord during the Board meeting at the start of her tenancy concerning parking. However, if the tenant had read the parking clause in her agreement before she signed it she could have discussed this with the landlord prior to signing the first agreement in August, 2010 and clarified the parking situation at that time. I further find that the tenant was requested to remove her vehicle on two grounds one being that it was a recreational vehicle which was not permitted to be parked long term and two that the vehicle had no insurance dispute repeated requests to the tenant to get it insured. I also find it is irrelevant whether or not the parking spaces belonged to the landlord or the hospital. Parking was an agreement between the landlord and hospital and the fact remains that the tenant told the landlord she was seeking storage elsewhere for her motor home at the start of her tenancy and only required short term parking facilities and she failed to insure her vehicle for the last two months it was parked there.

I find the landlords gave the tenant amply opportunity to get insurance on her motor home and if she had done so when first requested this problem may not have escalated to the point that the motor home had to be towed away. Consequently, it is my decision that the tenant did not abide by the terms of the tenancy agreement by ensuring her motor home was insured and therefore her claim for compensation to recover the towing costs and storage costs and any related stress is dismissed without leave to reapply.

With regard to the issue with storage; the tenant must show that she was denied storage facilities by the landlord, that the storage locker in question was allocated to her unit and there were no other storage lockers available for her use for six weeks. In this matter I find the tenants testimony is contradicted by the testimony of the landlord. When one party contradicts the other the burden of proof falls to the tenant to provide corroborating evidence to support her claim. I am not satisfied that the storage locker was allocated to the tenants unit, I am not satisfied that the tenant complanied to the landlord and I am not satisfied that the tenant could not have

chosen another available storage locker to mitigate her loss. Consequently, it is my decision that the tenant has not met the burden of proof in this matter and her claim for $100.00 per month compensation for the loss of a storage locker is dismissed without leave to reapply.

Conclusion

The tenants claim for compensation of $1,240.00 is dismissed without leave to reapply. The remaining balance of the tenants' application is dismissed without leave to reapply.

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: March 17, 2011.

Residential Tenancy Branch