



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, MNDC, FF, OTHER

Introduction

This hearing was convened in response to an Application for Dispute Resolution filed by the tenants seeking:

1. To cancel a Notice to End Tenancy given for cause;
2. A monetary Order for compensation for damage or loss;
3. Recovery of the filing fee paid for this application; and
4. Other.

The tenants appeared at the hearing, the landlord did not. The tenant's gave evidence that they served the landlord with their application on April 12, 2011 by way of personal service on the landlord. I accept the tenants' undisputed evidence and am satisfied that the landlord has had notice of these claims.

The tenants gave evidence under oath.

Issue(s) to be Decided

Does the landlord have cause to end this tenancy? Have the tenants suffered a loss for which they should be reimbursed or compensated? Is the current tenancy agreement in full force and effect?

Background and Evidence

The evidence of the tenants is that this tenancy initially began on February 1, 2003 when the male tenant Ken and his son Harold took up residence in the rental unit. A Tenancy Agreement between only Harold and the landlord was entered into at that time. Tenant Ken testified that at that time the landlord did not require both Harold and Ken to be specifically named in the Tenancy Agreement. The tenants submitted the tenancy agreement into evidence and it shows that a security deposit of \$235.00 was paid and rent, at the time, was fixed at \$470.00 per month which included parking. The tenants

testified that they also pay an addition \$20.00 per month for an additional parking spot. In approximately 2007 Harold vacated the rental unit moving into a suite on the fourth floor with his girlfriend. Ken remained in the subject rental unit and in March of 2010 Shirley moved into the rental unit with Ken. Since March 2010 Ken and Shirley have paid rent to the landlord and the landlord has accepted those rental payments.

The tenants testified that during the Christmas holidays in 2010 the landlord had Shirley's car towed along with her daughter's vehicle. Shirley testified that her car was parked somewhat over the line because the car next to her had gone over that line. Her daughter's car was parked in their secondary spot next to Shirley's car. The tenant says that the cars remained in place for a few days during Christmas celebrations. The tenant says she understands a note was placed on her windshield asking her to move her car because she had parked over the lines making it difficult for the car next to her to park. However the tenant says she did not leave the rental unit during the Christmas celebrations and did not see the note. It was not until December 28, 2010 when she went out to use her vehicle that she discovered that both her vehicle and her daughters' had been towed.

The tenants say this towing is in retaliation for them not agreeing to sign a new tenancy agreement with the landlord. The tenants say that on January 16, 2011 the landlord presented them with a new tenancy agreement raising their current rent from \$574.00 to \$750.00 and asking for an increased damage deposit. The tenants have refused to sign the new agreement and the landlord has been threatening to evict them and has issued this Notice to End Tenancy for cause. The tenants are asking that their current tenancy agreement be confirmed.

Analysis

With respect to the tenants' application to cancel the Notice to End Tenancy given for cause, the onus or burden of proof is on the party making the claim. In this case the landlord has claimed that he has cause to end this tenancy, the tenants have disputed that claim and the landlord must prove that he has cause to end the tenancy. The landlord did not attend the hearing to provide evidence to support the Notice to End Tenancy that he served on the tenants. I therefore set aside that Notice. The effect of this decision is that this tenancy shall continue.

With respect to the tenants' claims for recovery of towing fees in the sum of \$241.92 I will accept the undisputed evidence of the tenants and find that the landlord had their vehicle and/or the vehicle of their guest improperly towed. In order to recover the cost

of the towing in the sum claimed of \$241.92 I direct the tenants to deduct this sum from their next rental payment.

With respect to the issue of the tenancy agreement, the landlord has accepted rent payments from the tenants and in so doing he has established a tenancy agreement with them. The terms of the tenancy agreement are the standard required terms set out in the Residential Tenancy Act and Regulations. Rent has been established at \$574.00 per month which sum includes one parking stall and the tenants must pay \$20.00 per month for the second stall. Increasing the rent outside the provisions of the Residential Tenancy Act is in violation of the Act unless the landlord receives an Order of the Residential Tenancy Branch allowing him an extraordinary rent increase.

As the tenants have been successful in their claims I will allow them to recover the filing fee they have paid for this application. To recover this sum I direct the tenants to deduct \$50.00 from their next rental payment.

The total amount that the tenants will be deducting from their next rental payment is \$291.92.

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*.
