Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNDC, FF, O

Introduction

Previous decisions have been issued during what is a history of recurring disputes between these parties. Most recently, as set out in the Interim Decision dated May 25, 2011, the parties were provided with an opportunity to further address, in this hearing, the current issues concerning the tenant's application for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement / recovery of the filing fee / and "other." "Other" refers to the aspect of the dispute pertaining to the location of the parking stall assigned to the tenant. Both parties attended this hearing and provided affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to any or all of the above under the Act, Regulation or tenancy agreement

Background / Evidence / Analysis

While the parties agreed to enter into a tenancy agreement on December 15, 2001, it is understood that the tenancy itself commenced at the beginning of 2002. An overview of the current issues in dispute and my findings around each are set out below.

Assignment of Parking Stall ("stall"):

The original tenancy agreement provides that stall #114 is assigned to the subject unit. Later, as stall numbers were painted over and re-numbered, stall #114 became #248.

At some stage the tenant identified a concern with the overhead lighting at stall #248. In response, the landlord* (changed in 2005 from the original*) re-assigned the tenant to stall #235. The tenant used stall #235 for approximately 18 months before identifying concerns around personal safety, and requesting another re-assignment in July 2007.

As the tenant was mindful that her original stall #248 had been in use by another tenant for a significant period of time, she made no request to be re-assigned to it. However, the tenant's understanding was that other stalls located near her original stall would be

coming available, and she drew the landlord's attention to those particular stalls in writing. Specifically, as the tenant understood that stall #242 was available, she requested re-assignment to it. The landlord took the position that stall #242 was not available and declined the tenant's request.

The tenant considers that the landlord is determined not to accommodate her request for stall re-assignment. The landlord insists that stall #242 is not available, that stalls located near #242 are not available and, further, that responding to the tenant's request for stall re-assignment simply reinforces what is perceived to be a pattern of unceasing demands.

The unit is not a strata property, pursuant to which governance would be undertaken on the basis of bylaws, rules, guidelines and policies or procedures. The landlord acknowledges that in regard to units in the subject building, there are no formal rules, guidelines, policies or procedures for dealing with things such as re-assignment of stalls. In general, the landlord's response to such a request would be to suggest that a tenant "check back" with the landlord periodically to determine any change in the status of stall availability.

The subject tenancy agreement provides that a stall is assigned to the unit. The tenant was assigned to a different stall from the one originally assigned for her use after she expressed a concern about lighting. Thereafter, for reasons related principally to a diminished feeling of personal safety, she has requested a further re-assignment. While it is unfortunate that the parties have thus far been unable or unwilling to resolve this matter between them, I am unable to conclude that the landlord's refusal to re-assign another stall is a breach of the Act, Regulation or tenancy agreement. Accordingly, this aspect of the tenant's application is hereby dismissed.

Reimbursement of vehicle towing charge of approximately $110.00:

A summary of the most relevant correspondence between the parties follows:

July 7, 2010: landlord reiterates to tenant in writing that stall #235 is "allocated to your suite."

September 30, 2010: tenant informs landlord in writing that she will be using stall #242 "from now on."

October 1, 2010: landlord informs tenant in writing that stall #235 is assigned to her, and that if she parks in any other stall her vehicle will be towed at her expense.

October 5, 2010: landlord informs tenant in writing that she has been observed parking in stall #242, and reminds her that she is only authorized to park in stall #235. This letter includes a "final request" that the tenant only park in stall #235.

December 7, 2010: tenant's vehicle is towed from stall #242.

December 14, 2010: landlord again informs tenant in writing that her stall is #235, and that if she parks in any other stall her vehicle will be towed at her expense.

Based on the documentary evidence and testimony, I find that the tenant was informed clearly in writing that the stall assigned to her is #235, and that parking in any other stall will result in her vehicle being towed at her expense. I find that there is insufficient evidence to support an allegation that by having the tenant's vehicle towed at her expense from stall #242, the landlord contravened the Act, Regulation or tenancy agreement, and that the landlord therefore bears responsibility for reimbursing the tenant for the cost of towing. This aspect of the tenant's application is, therefore, hereby dismissed.

Reimbursement of rent payment of $54.62:

In the previous decision dated January 19, 2010 (hearing held on December 15, 2009), the dispute resolution officer noted that the "record of over and under payments of rent by the tenant is confusing."

The tenant claims that the justification for her payment to the landlord in the amount of $54.62 is unclear, and that the inability of the landlord's agent to explain it during a hearing held on September 29, 2009, supports her claim of entitlement to a full reimbursement. At this present hearing, the landlord's agent stated that the issue of $54.62 was not a matter in dispute at the hearing on September 2009, and that for this reason he was not in a position to adequately explain it.

In this present hearing the landlord's agent referred to documentary evidence previously submitted which includes, but is not limited to, the following:

i) An excerpt of findings set out in the decision dated January 19, 2010, as follows:

> I find that the landlord is entitled to a monetary order in the amount of $120.02, being the amount by which rent was underpaid for the months of October and November, having regard to the deduction for the increased bill. In addition to this award the tenant must immediately pay the

landlord the difference between the actual amount she has paid and the rental amount of $982.25 for December, 2009 and January 2010.

ii) The landlord's letter to the tenant dated February 12, 2010, in which the landlord acknowledges receipt of $120.02, as above, and informs the tenant that she still owes $54.62 for "the amount which was underpaid for the months of December 2009 and January 2010."

iii) 10 day notice dated March 5, 2010, issued by the landlord to the tenant and showing rent still outstanding in the amount of $54.62.

iv) The landlord's letter to the tenant dated March 15, 2010, in which the landlord acknowledges receipt of the tenant's cheque payment of $54.62.

v) A "chart" attached to the landlord's letter to the tenant dated March 31, 2010, which sets out a detailed record of the status of "charges," "payment," and "balance" during the period from October 2009 to March 2010. The "chart" accounts specifically for $54.62, which is the amount in question.

Having considered the documentary evidence and testimony, I find that the tenant's payment of $54.62 satisfied her obligation to discharge the underpayment of rent combined for December 2009 and January 2010. In the result, I find that the tenant has not established entitlement to reimbursement of $54.62. This aspect of the tenant's application is, therefore, hereby dismissed.

Filing fee:

As the tenant has not succeeded in this application, her application to recover the $50.00 filing fee is hereby dismissed.

Conclusion

The tenant's application is hereby dismissed in its entirety.

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*.

DATE: June 22, 2011

_____

Residential Tenancy Branch