



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, PSF, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss - Section 67;
2. An Order compelling the Landlord to comply with the Act - Section 62;
3. An Order compelling the Landlord to provide services required by law – Section 65; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to an order compelling the Landlord to act?

Background and Evidence

The Tenant states that since August 2011, the Tenant has been subjected to actions by a third party acting on behalf of the Landlord (the “Caretaker”) that has breached the Tenant’s right to quiet enjoyment. The Tenant states that at the beginning of the tenancy the Caretaker was responsible for taking the Tenant’s garbage and recycling from the Tenant’s front doorway to the city garbage and recycling bins. The Tenant states that in carrying out this task, the Caretaker would remove items from the recycling and throw them back in front of the Tenant’s door. After a complaint to the Landlord, the Parties reached an agreement on October 12, 2011 that the Tenant would

be responsible to remove and deposit his own garbage and recycling. The Tenant states however that the Caretaker then removed the Tenant's receptacles from the front door. The Tenant states that on November 6, 2011, the Caretaker further removed the city bins from the property and that these bins were not returned or replaced until approximately December 7, 2011. The Tenant states that the receptacles in front of the door have since been replaced by the Tenant. The Landlord states that the Caretaker is not employed or contracted by the Landlord but is a neighbour and previous owner of the property containing the Tenant's unit and that the Caretaker has been carrying out neighbourly activities to keep the property clean and tidy. The Landlord states that there was a misunderstanding about the bins that were removed as these bins were in fact bins owned by the neighbour.

The Parties agree that the Tenant's tenancy agreement provides the Tenant with one parking space. The Tenant states that in June 2011, the caretaker had the Tenant's visitor's car towed from the Tenant's parking space, over the objections of the Tenant and others. The Landlord states that the towing of the visitor's car was done without his knowledge but that he responded to the Tenant's complaint about the towing and the Parties came to an agreement on visitor's use of the Tenant's parking spot. The Tenant states that the Caretaker however continues to watch the parking and has left warning notes on visitor's cars. The Landlord confirms that the Caretaker was asked by the Landlord to keep an eye on the parking area as people from a nearby rooming house were parking in the spaces. The Tenant states that the tenants are capable of policing their parking spots themselves and that the Tenant wants the Caretaker's name removed from the Busters sign giving the Caretaker the authority to call for a tow. The Landlord states that he is agreeable to changing the arrangements over towing authority.

The Tenant clarified that the requests for compliance by the Landlord contained in the application are in relation to the Landlord complying with the Act in ensuring that the Tenant's quiet enjoyment is protected from interference from the Caretaker in relation to

the garbage and parking. The Tenant claims the amount of \$3,044.40 in compensation for the loss of quiet enjoyment.

Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment, including freedom from unreasonable disturbance. Given the evidence from the Landlord that the Landlord accepted the help of the Caretaker in relation to the garbage and the parking, I find that the Caretaker acted under the authority of the Landlord in tossing articles from the recycling onto the Tenant's doorstep and in removing the Tenant's receptacles. I find these actions to be somewhat of an unreasonable disturbance. I also find that the Landlord did act reasonably to reach an agreement with the Tenant to change the collection of the garbage. Given however that following this agreement, the Tenant did not have access to a garbage bin for a period of time, I find that the Tenant's claim has some merit.

Given the evidence of the Landlord in relation to the parking, I find that the Caretaker acted with the authority of the Landlord to monitor the parking resulting in the towing of the Tenant's visitor's car. The Parties do not dispute that the Tenant is entitled to one parking spot as contained in the tenancy agreement. Given this item in the tenancy agreement, I find that it would be reasonable for the Tenant to determine who parks in that spot. I find that although the Landlord acted reasonably to come to an acceptable arrangement for visitor parking in the Tenant's spot, given the ongoing authority given to the Caretaker to monitor the parking and have cars towed and given the Tenant's reasonable right to determine who parks in the Tenant's stall, I find that the Tenant's claim in this regard has merit.

Given the above findings of merit, I find that the Tenant is entitled to a nominal award of \$150.00. The Tenant is also entitled to recovery of the \$50.00 filing fee for a total entitlement of \$200.00 and I order the Tenant to reduce the next month's rent by this amount.

Given that the Tenant's request for compliance are in relation to the Landlord acting in compliance with the Tenant's right to quiet enjoyment, I find that this part of the application has been dealt with by the above findings and award.

Conclusion

The Tenant is entitled to a monetary award of \$200.00 and I order the Tenant to reduce the next month's rent payable by this amount.

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: December 15, 2011.

Residential Tenancy Branch