



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF, O

Introduction

This was the adjourned hearing dealing with the tenant's Application for Dispute Resolution for a monetary order for money owed or compensation for damage or loss, an order requiring the landlord to comply with the Residential Tenancy Act (the "Act") and to recover the filing fee, and should be read in conjunction with my Interim Decision of November 17, 2011.

The tenant and the landlord's resident managers, current property manager and most recent property manager were in attendance at the hearing. The hearing process was explained and thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond each to the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has the tenant established an entitlement to a monetary order pursuant to section 67 of the Residential Tenancy Act (the "Act"), an order requiring the landlord to comply with the Act and to recover the filing fee?

Background and Evidence

This one year, fixed term tenancy began on August 3, 2011, monthly rent is \$850.00 and the tenant paid a security deposit of \$425.00 at the beginning of the tenancy.

Respondent, PM, was employed by the owner of the residential property to provide management services, until October 31, 2011. Respondent RNRES, is currently employed by the owner to provide property management services. Respondent KD along with his spouse, MGD, are the resident managers. MGD provided the primary

testimony for the respondents. The tenant was residing in a property managed by PM prior to the tenancy in question.

The tenant's monetary claim is \$830.00, which includes towing costs reimbursement, cab fee and compensation for inconvenience and interference with privacy.

In support of his application, the tenant's relevant evidence included a towing bill for \$218.98, a written summary of events, a diagram of the residential property's parking and plan view and photos of his parking stall.

In support of his application, the tenant testified that when he viewed the rental unit prior to deciding to live in the building, he asked landlord's agent MGD which parking stall he would be assigned, with the response being most likely stall #3. The tenant submitted that he informed MGD that as well as his vehicle, he also had a scooter that needed to be parked upon the premises. The tenant contends that MGD informed him that he could park the scooter in stall #3, but in front of his car, and upon the strength of that statement, he decided to move in.

The tenant submitted upon moving into the rental unit, on or about August 19, 2011, he noticed that the resident managers did not attend to perform the move in inspection and deliver the keys, but rather this was done by a representative from PM. The tenant submits that prior to his actual occupancy on August 19, 2011, the resident managers posted two degrading letters on his door of the rental unit and that from that point forward, the situation with the resident managers has been tension filled. The tenant also submitted that he requested to be assigned another parking stall which he contended was not being used and would allow him to park his scooter under a tree. This request was denied.

The tenant submitted that due to the escalating tension, he could deal only with PM and not the resident managers. Some of the problems stem from the alleged failure of the resident managers to deliver his pre-paid laundry tokens and notices concerning his daughter. The tenant also referred to respondent PM's documentary evidence to prove the escalating tension.

More serious to that, however, according to the tenant, is that the resident managers posted breach letters on his door, 50 days after moving in, informing him that he was to remove one of his vehicles from parking stall #3. The breach letter was dated October 13, 2011. The tenant submitted that he received another breach letter, dated October 18, 2011.

The tenant submitted that his scooter was towed from the premises on October 29, 2011, at a time when there was only one vehicle parked in his stall, as his van was not there that day.

The tenant contends that he is entitled to reimbursement of the towing costs and compensation for his loss of privacy and inconvenience.

In response, respondent, PM, stated that they did not disagree with the tenant's application as the tenant was a long term tenant in other properties managed by them and have never caused problems before. Further respondent PM submitted that they had instructed the resident managers to assign another stall to the tenant and not post breach letters to the tenant. Respondent PM submitted that if a monetary order was issued, they should not be held responsible for paying it as they disagreed with the resident managers' actions.

In response, respondent MGD, stated that she did not inform the tenant that he could park his scooter in the tenant's parking stall, that such is in violation of the tenancy agreement, and would never be allowed.

MGD submitted that the tenant was going behind the resident managers' backs, as he was getting favoured treatment from PM due to their past association and therefore refused to respond to the resident managers' requests.

The resident managers submitted that the breach letters were issued only after the tenant refused to move the scooter from either the same parking stall or in front of the tenant's parking stall. MGD contended that the tenant's scooter being parked in front the barrier interfered with another tenant's parking stall and that they had received complaint letters from other tenants in the residential property about the double parking.

MGD denied that the scooter was in parking stall 3 on the day it was towed, but rather was parked in front of the barrier, which was not part of the parking stall, and was towed only because the tenant refused to abide by the breach letters. MGD also denied that they could assign the tenant another parking stall as the one he requested was already being used by a long term tenant.

MGD stated that they had acted in the same manner with the tenant as they had for the entire 8 ½ years they have worked under PM, with such issues as issuing breach letters and selling laundry tokens.

MGD also denied that the tenant did not move into the rental unit until August 19, 2011, and that he had begun moving items in shortly after signing the tenancy agreement. MGD submitted that the letters posted on the door in August revolved around complaints they received about a 9-10 year old girl going from door to door requesting the residents to sign a petition. The resident managers contended this girl was the tenant's daughter, who lived with him longer than he originally informed the landlord's agents, in violation of his tenancy agreement.

The resident managers' relevant evidence included the tenancy agreement, the breach letters, email communication between them and PM, photographs depicting the scooter being parked outside the stall and the interference with the adjoining tenant's parking stall, and other tenants' complaint letters.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the tenant to prove damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

In the circumstances before me, the tenant supplied deficient and inconclusive evidence which I find does not meet the burden of proof necessary for a monetary claim.

In reaching this conclusion, I find the tenant failed to demonstrate that the landlord's agents violated the Residential Tenancy Act or the tenancy agreement. Rather I find that upon a balance of probabilities, the tenant violated his tenancy agreement to keep to parking in one stall as I reject his agreement that his parking stall extended beyond the concrete barrier or that he informed the resident manager that he would be parking a second licensed vehicle on the premises.

I find the landlord's agent gave the tenant reasonable warning, in the form of breach letters, requesting his compliance with the terms of the tenancy agreement, and that he ignored the repeated requests, to his own financial detriment.

As I find that the tenant failed to prove step 2 in his burden of proof, I therefore **dismiss** the tenant's application for monetary compensation, **without leave to reapply**.

Even had I not dismissed the tenant's application for his failure to demonstrate or prove that the landlords violated the Act or the tenancy agreement, I would still have dismissed the tenant's application as I also find that he failed to mitigate his potential loss. As I have found that the tenant ignored the warnings and breach letters, I find the tenant failed to mitigate his potential loss by applying for dispute resolution earlier. Rather he waited until the landlord's agents acted upon the breach letters.

As I have found no violation of the Act, I also dismiss the tenant's request ordering the landlord to comply with the Act.

Due to the above, I find the tenant has provided no evidence or testimony to substantiate the merits of his claim.

Conclusion

I therefore dismiss the tenant's application, in its entirety, without leave to reapply.

As I have dismissed the tenant's application, I decline to award him the filing fee.

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 09, 2011.

Residential Tenancy Branch