



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC

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. An Order Cancelling a Notice to End Tenancy for Cause - Section 47; and
2. A Monetary Order for damage or loss under the Act - Section 67;

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

Issue(s) to be Decided

Is the Notice Valid?

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on July 1, 2003. Rent in the amount of \$1,265.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenants in the amount of \$550.00.

The Landlord states that the Tenant has parked an uninsured motor vehicle in the Tenant's assigned underground parking spot, contrary to the terms of the tenancy agreement. The Landlord states that a letter dated January 18, 2010 was sent to all residents of the building informing tenants that unregistered and unlicensed vehicles parked in the parkade were not permitted and would be towed by the end of the month. By letter dated May 13, 2011, the Landlord referred the Tenant to section 23 of the tenancy agreement and requested that the Tenant licence and insure the vehicle by

June 20, 2011 or the vehicle would be towed. By letter dated December 1, 2011, the Landlord sent a final letter to the Tenant informing the Tenant that if the vehicle were not licensed and insured by December 31, 2011, the vehicle would be towed. On January 10, 2012, the Landlord served the Tenant with a Notice to End Tenancy for Cause (the "Notice") by posting the Notice on the Tenant's door. There is no dispute that the Notice has an effective move-out date of February 29, 2012 and lists the following cause:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord states that the Tenant has breached section 23 of the tenancy agreement that sets out, inter alia, that "parking areas are to be occupied by vehicles which are in operating condition, currently licensed and insured." The Landlord argues that this section is a material term of the tenancy agreement because the section is a part of the lease and because a breach of this term could pose a fire hazard and liability to other tenants. The Landlord states that neither the Tenant's car nor other tenant's cars have been towed following any of the warning letters. The Landlord states that all other vehicles in the parkade that were the subject of the original warning letter have now complied by obtaining storage insurance. The Landlord states that the Tenant only needs to obtain storage insurance in order to be in compliance with the tenancy agreement.

The Tenant disputes that he is in breach of a material term and states that the section of the tenancy agreement being relied upon by the Landlord is not a material term, is not clearly related only to a vehicle but other stored items as well and finally, has no relevance to the provision of his unit.

The Tenant states that for two years now the Landlord has been harassing him about insuring the car such that he cannot go into the hallway of the building without being asked about the car. Further, the Tenant states that on November 11, 2011, the

Landlord came to his door to complain about a sign that the Tenant placed in his window and that the Landlord acted aggressively by placing his foot against the door and attempting to enter the unit until the Tenant said he would call the police. The Tenant states at this point, he overheard the Landlord tell the other agent that they would serve the Tenant with an eviction notice. The Tenant states that as a result of the actions of the Landlord, the Tenant has suffered anxiety and stress and has been denied enjoyment of his home. The Tenant claims the amount of \$10,000.00 in compensation.

The Landlord states that there is no animosity towards the Tenant and that they have tried to resolve the matter of the vehicle with the generous amount of time given to the Tenant to remedy the matter. The Landlord denies the Tenant's version of events on November 11, 2011 and states that the Landlord kindly asked the Tenant to remove the sign but that the Tenant only slammed the door on the Landlord. The Landlord states further that he has voice mail messages from the Tenant stating that the Landlord is a good manager. The Landlord denies causing the Tenant any stress and that there has never been any anger involved in trying to resolve the matter with the vehicle.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. A material term of a tenancy agreement is a term that both parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Although the Landlord argues that section 23 of the tenancy agreement is a material term, it is clear that the Landlord has been warning the Tenant about his vehicle for nearly two years. Further, the Landlord has not towed the vehicle out of the parkade once during this period. This strongly indicates that such a breach of the tenancy agreement is not so important as to be material to the overall tenancy. Accordingly, I find that the Landlord has not proven on a balance of probabilities that the parking of the Tenant's uninsured vehicle is a *breach of a material*

term of the tenancy agreement. This finding does not address whether there is any breach of the tenancy agreement.

As the Landlord has not met the burden of proof on a balance of probabilities in relation to the stated cause, I find that the Notice is invalid and that the Tenant is entitled to a cancellation of the Notice.

Section 28 sets out a tenant's entitlement to quiet enjoyment that includes a right to reasonable privacy and freedom from unreasonable disturbance. Section 7 of the Act further provides that if a landlord does not comply with the Act, the landlord must compensate the tenant for damage or loss that results. While the Tenant claims to have been caused stress and anxiety as a result of the Landlord's actions, the right of the Tenant to quiet enjoyment must also be balanced with the Landlord's rights to maintain the terms of the tenancy agreement. Given the evidence of the Parties that more than one Tenant has been the subject of the Landlord's actions to enforce a term of the tenancy agreement and given the time the Landlord has provided the Tenant to respond to their requests, I cannot find that the Landlord's actions in this respect are out of the realm of a reasonable exercise of the Landlord's rights. Further, considering that the Tenant did not provide any medical evidence of significant stress or anxiety, I cannot find that the actions of the Landlord in carrying out their duties caused the Tenant to suffer stress or anxiety. Accordingly, I find that the Tenant has not substantiated on a balance of probabilities that the Landlord has caused any damages to the Tenant and I therefore dismiss this part of the Tenant's application.

Conclusion

The Notice is cancelled and the tenancy continues. The Tenant's claim for compensation is dismissed. 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: January 26, 2012.

Residential Tenancy Branch