



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application: CNC, MNR, MNDC, OLC, ERP, AS, RR, FF

Landlord's Application: MND, MNDC, FF

Introduction

This hearing dealt with cross applications.

The tenant applied to cancel a Notice to End Tenancy for Cause; requested a Monetary Order for emergency repairs and damage or loss under the Act, regulations or tenancy agreement; Orders for compliance and emergency repairs; authorization to assign or sublet; and, authorization to reduce rent for services or facilities not provided.

The landlord applied for a Monetary Order for damage to the unit; and, damage or loss under the Act, regulations or tenancy agreement.

Preliminary and Procedural Matters

Both parties appeared or were represented at the hearing although the tenant was seven minutes late. Both parties provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Although both parties served evidence upon the Branch neither party served their evidence upon each other. Rather, the parties only served each other with their Application for Dispute Resolution and Notice of Hearing. I excluded the evidence submitted with the exception of the Notices to End Tenancy submitted by each party and the tenancy agreement submitted by the tenant as I was satisfied the landlord had a copy of the agreement.

I amended the applications to exclude the name of the tenant's minor child who is not a party to the tenancy agreement.

I determined that the tenant does not wish to assign or sublet the rental unit and that there are no outstanding emergency repairs; thus, I did not consider those requests further.

Issue(s) to be Decided

1. Should the Notices to End Tenancy be upheld or cancelled?
2. Is it necessary to issue Orders for compliance to the landlord?
3. Should the tenant or landlord pay for the replacement of the shower doors?
4. Is the tenant entitled to a rent reduction for loss of parking space on the property?

Background and Evidence

The tenancy commenced April 1, 2012 and the tenant is required to pay rent of \$850.00 on the 1st day of every month under the tenancy agreement. The tenancy agreement provides that rent includes parking for one vehicle. The subject rental unit is a basement suite. The landlord and his family were living on the main level until September 2012 when new tenants moved in.

It was undisputed that the tenant ordinarily parked on the street up until September 2012. On September 7, 2012 the landlord attended the property in an attempt to deal with the parking dispute between the upper tenants and the tenant. An argument ensued resulting in the landlord serving the tenant with two Notices to End Tenancy.

The tenant presented two pages of a very old version of a four-page Notice to End Tenancy. It has an issuance date of September 7, 2012 and an effective date of October 1, 2012.

The landlord also presented two-pages of a very old version of a four-page Notice to End Tenancy with an issuance date of September 7, 2012; however, the effective date reads November 1, 2012.

On the second page of both Notices to End tenancy, the landlord provides the reason for ending the tenancy as being related to the argument over parking on September 7, 2012; however, the landlord ticked the box that corresponds to a 10 Day Notice to End Tenancy for Unpaid Rent rather than the boxes that correspond to a 1 Month Notice to End Tenancy for Cause.

The tenant is seeking to have the Notices to End Tenancy cancelled and an Order that the landlord cease threatening the tenant with eviction when the tenant parks on the property. Alternatively, the tenant is willing to park on the street and give up his right to park on the property in exchange for a rent reduction. The tenant was of the position that \$25.00 per month would be a fair rent reduction.

The tenant also applied for monetary compensation of \$150.00 for the five months he already spent parking on the street. The tenant acknowledged that parking on the street was “not a big deal” to him but that he applied for this amount to offset the lost wages related to disputing the Notice to End Tenancy.

The landlord explained that he always intended for the tenant to park on the street, that he told the tenant to park on the street since the beginning of the tenancy, and that the tenancy agreement refers to how many vehicles the tenant can park on the street. The landlord submitted that although the street is city property the landlord maintains it. The landlord wants the tenant to continue to park on the street but was not agreeable to compensating the tenant or giving the tenant a rent reduction as the tenant is paying less than market rent already.

Finally, both parties are seeking recovery of amounts they paid with respect to replacement of shower doors in the rental unit. It is undisputed that the tenant paid the landlord \$180.00 towards the cost to purchase new shower doors after the existing ones broke in May 2012.

The tenant submitted that the shower doors jammed when his daughter was in the shower so the tenant pushed on the doors to release her and the doors broke. The tenant submitted that the landlord threatened to evict him if he didn't pay approximately one-half of the cost to purchase new doors.

The landlord submitted that the tenant broke the doors and should be held responsible for the entire cost of the new shower doors, plus compensate the landlord an additional \$500.00 for his labour to install the doors. The landlord acknowledged that when the incident occurred the parties had agreed upon a \$180.00 contribution by the tenant and the landlord gave the tenant the receipt for the shower doors.

Analysis

In order for a landlord to end a tenancy, the landlord must issue a Notice to End Tenancy in the approved form. Further, the Notice is to be clear and unambiguous. A

Dispute Resolution Officer may permit a Notice to End Tenancy to be amended if the tenant knew or should have known the omitted information.

In this case, I was presented with two Notices to End Tenancy, neither of which were in the approved form. The form is extremely outdated and I am not satisfied the tenant would have known the information that was contained on the two pages not served upon him. Finally, I found the reason(s) for issuing the Notices was ambiguous. Therefore, I find the two Notices that were issued September 7, 2012 to be invalid and unenforceable.

In light of the above, I cancel the Notices with the effect that the tenancy shall continue. Accordingly, I proceed to make a determination with respect to the parking dispute.

The tenancy agreement, as it is currently written, clearly provides that the tenant is to be provided parking for one vehicle. I find that “parking” refers to parking on the residential property since the landlord does not have the right to control parking on the City’s property. Although the landlord may have intended to indicate street parking the landlord has the obligation to provide a written tenancy agreement that reflects the agreement between the parties that is written to clearly communicate the rights and obligations of the parties, is unambiguous, and compliant with the Act. I find the tenancy agreement, as it is written, clearly communicates to the tenant that he is allowed to park one vehicle on the property and that such a term is compliant with the Act. Therefore, I find that under the tenancy agreement, the tenant was permitted to park on the landlord’s residential property.

Since the tenant was willing to amend the tenancy agreement to terminate his right to park on the property and the landlord also indicated that he does not want the tenant to park on the residential property, in order to resolve this dispute **I ORDER the tenancy agreement be amended to reflect parking for zero cars on the property.** The tenant remains at liberty to lawfully park on city streets in front of or near the residential property free from interference by the landlord.

In exchange for a termination of the tenant’s right to park on the property, I find the tenant’s request for a rent reduction reasonable and consistent with the requirements of section 27 of the Act [*Terminating or restricting services or facilities*]. Therefore, **I ORDER the tenancy agreement amended to reflect monthly rent of \$825.00 effective November 1, 2012.**

With respect to the tenant’s request for compensation for not using the driveway to park since the beginning of the tenancy I find as follows. In order to succeed in a claim for

damage or loss I must be satisfied that the claimant actually suffered a loss. In the tenant's own words, parking on the street prior to September 2012 was "no big deal." Nevertheless, I find the tenant's inability to park in the driveway despite his right to do so is a breach of the tenancy agreement and the Act by the landlord. Therefore, **I find award the tenant a nominal amount of \$1.00 per month, totalling \$5.00, for loss of parking during the months of April through August 2012.**

I am satisfied that starting in September 2012 parking did become a significant issue and the landlord's attempts to restrict the tenant's rights under the tenancy agreement caused the tenant to suffer a loss of quiet enjoyment of the property due to the argument with the landlord and receiving two eviction notices. Therefore, **I award the tenant compensation for loss of parking and quiet enjoyment in September 2012 and October 2012 at the rate of \$25.00 per month, totalling \$50.00.**

With respect to the monetary claims filed by both parties for the shower door replacement I make no award to either party. Under the Act the tenant is responsible for repairing damage he caused. Under the Act the landlord is responsible for repairing and maintaining the property. I find it just as likely the damage to the shower doors was a result of combined responsibility or negligence on the part of both parties. I find the parties had reached a reasonable settlement to this issue in May 2012 when the incident occurred. Therefore, I refuse to interfere with the settlement agreement already reached by the parties as I find that these monetary claims were really motivated by anger over the parking dispute.

As the tenant was more successful with his application I award the \$50.00 filing fee to the tenant.

In summary, the tenancy agreement shall be amended to reflect no parking on the property and monthly rent of \$825.00 commencing November 1, 2012. I further authorize the tenant to deduct the following awards from rent due for November 2012, or a subsequent month's rent, as applicable:

Loss of parking (April – August 2012)	\$ 5.00
Loss of parking and quiet enjoyment (September & October 2012)	50.00
Filing fee	<u>50.00</u>
Total authorized deduction	\$ 105.00

Both parties are encouraged to find a way to communicate with each other in an effective and professional manner. The parties would be well served to become familiar with their respective rights and obligations under Act and complying with those

requirements. Therefore, I provide each party with a copy of the Residential Tenancy Act guidebook for further reference.

Conclusion

The landlord's request for monetary compensation has been dismissed entirely.

I have ORDERED the tenancy agreement amended to reflect that there is no parking on the residential property for the tenant and a new monthly rent of \$825.00 commencing November 1, 2012.

I have also awarded the tenant the sum of \$105.00 which he is authorized to deduct from November's rent payable, or a subsequent month's rent, as applicable.

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: October 24, 2012.

Residential Tenancy Branch