



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, OLC, RR

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Landlord by mailing, by registered mail to where the landlord carries on business on May 24, 2013. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to an order that the Landlord comply with the Act, regulations or tenancy agreement?
- c. Whether the tenant is entitled to an order reducing the rent for services or facilities agreed upon but not provided.

Background and Evidence:

The tenancy began on August 30, 2011. The rent is \$835 per month payable on first day of each month. The tenant(s) paid a security deposit of \$417.50 on July 25, 2011.

The tenant seeks compensation for services agreed upon but not provided alleging that the landlord agreed to provide a specific parking stall but has failed to do so. The tenant testified that the tenancy agreement provides that parking for 1 vehicle is included in the rent and the specific parking stall is identified. She testified that someone else has been parking in that stall since she moved in. She attempted to obtain the name of that person but the landlord was not forthcoming. In March she was able to identify the person who was parking in her stall. On March 6, 2013 she wrote to the landlord advising him this person was using her stall and requested assistance to have her vehicle removed.

The manager responded advising the tenant that the tenant had not been given a specific parking stall and that she was not entitled to the request that she was making. The tenant testified she has difficulty communicating with the manager. She acknowledged the first time she advised the manager of her concern was the letter of March 6, 2013. The tenant does not and has never owned a car.

The landlord's testimony included the following:

- The rental property is a heritage property composed on 10 units. He has lived in the property for 7 years and has been a manager for that last 3 years.
- The landlord has an arrangement with the city in which they have 5 off street parking stalls and the rest of the parking is on street. He testified that tenants are not charged extra for a parking stall. When there is a vacancy the parking stall is offered to tenants on a first come basis with the longest tenured tenants being asked whether they wish the parking stall. In some cases the tenant might refuse because it is not close to their unit.
- The manager testified he was present when the agent for the landlord discussed the parking arrangements as set out above with the tenant. It pointed out that the box next to the typewritten notation "parking" (which indicates what is included in the rent) was not "x" indicating the parking is not included. He

testified the agent advised the tenant that if a parking space became available it would be offered to her and parking stall 3 was the most convenient.

- The manager testified that the first time he was made aware that the tenant considered parking stall #3 was hers was when she gave him her letter dated March 6, 2013.
- He confirmed that the landlord does not charge anything extra for the 5 parking stalls that have been given to tenants in the building. The parking stall claimed by the tenant has been given to another tenant.

Analysis

I determined the tenancy agreement is ambiguous. On one hand the box (indicating what is included in the rent) is not checked. However, the agent for the landlord in his handwriting has indicated there is parking for 1 vehicle and the tenant has been assigned a specific parking stall. There would be no reason to include that if it was not a service provided in the tenancy agreement. I do not accept the explanation of the landlord that the agent was offering this stall if it became available. Further, I do not accept the submission of the landlord that paragraph 9 of the tenancy agreement which provides there was no assigning or subletting of the unit prohibits the tenant from subletting her parking stall. The law provides that where there is an ambiguity it should be interpreted against the party that drafted the tenancy agreement (in this case it is the landlord). As a result I determined the tenancy agreement provides that the tenant is entitled to parking stall 3.

The more difficult question is determining what loss the tenant has suffered. I determined the landlord is not liable for any loss prior to receiving the letter of March 6, 2013. I determined the tenant failed to communicate to the landlord her concerns prior to that date. Further, the tenant does not have a car. She testified she is suffering inconvenience because her friends are unable to park in a parking spot close to her residence. The landlord does not charge extra for those who have obtained the benefit of a parking stall.

In the circumstances I determined the landlord has breached the tenancy agreement and the tenant is entitled to nominal damages in the sum of \$10 a month for the months of April, May and June.

Monetary Order and Reduction of Rent:

I ordered the landlord(s) to pay to the tenant the sum of \$30 such sum may be applied against future rent.

I further ordered that the rent be reduced by \$10 per month commencing July 1, 2013 and on the first day of each month until the landlord has offered the tenant the specific parking stall set out in the tenancy agreement.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: June 19, 2013

Residential Tenancy Branch