



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Donada Industries Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, 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. An Order Cancelling a Notice to End Tenancy for Cause - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

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 to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts:

The tenancy started in 1999. In August 2013 the Landlord noted that the Tenant parked a utility trailer on the common area beside the Tenant's unit. The trailer is licensed and insured. The Tenant has parked vehicles in the common area since the onset of the tenancy with and without permission of the Landlord. There are no signs in the common area regarding its usage. On August 19, 2013 the Landlord served the Tenant a one month notice to end tenancy for cause. The reason for the Notice is that the tenant has breached a material term of the tenancy agreement.

The Landlord states that the Tenant has breached section 28 of the tenancy agreement and that this is a breach of a material term. The relevant parts of Section 28 of the tenancy agreement provides as follows:

“The tenant shall not misuse common areas of the residential property, but shall use them prudently, safely and equitably and shall conform to all notices, rules or regulations posted on or about the residential property concerning the use of common areas, including, the use of . . . parking areas . . .”

The Landlord states that the parking of the utility trailer is a misuse of the common area. The Landlord states that the use of the common area this way may attract municipal fines for unsightliness. Further the Landlord states that the misuse of the common area may also result in clean-up costs for the Landlord. The Landlord states that the common area is only to be used for vehicles to turn around and that the Tenant's trailer makes it difficult to turn a car around in that area.

The Tenant's Advocate argues that section 28 is not a material term and that the common property is being used as intended: for other tenants and guests to park. The Advocate argues that a municipal fine is a possible future event and that there is no evidence of any municipal fines from the numerous vehicles parked there in the past. The Tenant provides photos of parked vehicles in the common area. The Landlord states that the vehicles that were parked in the common area and depicted in the photos have since been moved under instruction from the Landlord.

The Tenant argues that section 28 provides for the use of the common area by the tenants and guests and that nothing in the tenancy agreement restricts the Tenant from using the common area to park the trailer.

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 is so vital to the tenancy that any breach of the term would be fatal to the tenancy.

Given the lack of signs in the common area restricting parking, the undisputed evidence that vehicles are or have been regularly parked there for a number of years, and considering the Landlord's evidence of possible municipal fines to be weak, I find that the Landlord has not established that the Tenant has breached a material term of the tenancy agreement. I would note that even if such parking was a misuse of the common area, there is no evidence to support that such misuse is a breach of a material term as other methods, such as fines or towing pursuant to a restricted parking sign or rule, might be used to resolve the misuse as opposed to ending the tenancy. As a result, I find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. As the Tenant has been successful, I find that the Tenant is entitled to recovery of the filing fee and I order the Tenant to reduce November 2013 rent by \$50.00.

Conclusion

The Notice is cancelled and the tenancy continues. I Order the Tenant to reduce November 2013 rent by \$50.00 in full satisfaction of the claim.

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 02, 2013

Residential Tenancy Branch

