



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order that the landlords comply with the Act, regulation or tenancy agreement. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Is the tenant entitled to a monetary order and, if so, in what amount?
- Is the tenant entitled to an order that the landlords comply with the Act, regulation or tenancy agreement and, if so, on what terms?

Background and Evidence

This is the second hearing between these parties. The first hearing, also an application by the tenant, was on May 29, 2013, on files 249751 and 249752. In his decision the arbitrator described the basic tenancy agreement as follows: "A fixed term tenancy began on December 15, 2012 and reverts to a month to month tenancy after December 14, 2013. Monthly rent in the amount of \$800.00 is due on the 15th day of each month. A security deposit of \$400.00 was paid by the tenant at the start of the tenancy."

He also found that: "... the tenancy agreement includes 'parking for 1 vehicle', however, the tenancy agreement does not specify that a specific parking area is reserved for the tenant only. The parking area is shared between the landlord, the tenant, and guests of both the tenant and the landlord."

At the hearing the parties settled part of the dispute as follows:

- "From the date of the hearing the tenant's vehicle will not be blocked in or out of the parking area.
- Landlords agree to release tenant from fixed tenancy if tenant gives one month written notice to end tenancy as required for a month to month tenancy."

The tenant's claim for loss of quiet enjoyment, freedom from unreasonable disturbance and reasonable use of common area was ultimately dismissed.

The landlords and the tenant describe the physical layout of the property on which the rental unit is located in the same terms. The lot is long and narrow. A winding single lane driveway goes from the street to a paved parking area. The parking area is large enough to accommodate four vehicles parked side by side. The parking area is adjacent to the building in which the rental unit is located. There is a gate between the parking area and the entrance to the rental unit. The landlords live in a house about forty feet from the parking area. The parking area is not visible from the street.

The tenant has one car. The landlords have three motor vehicles.

The tenant says that the landlords have ignored the terms of the agreement and she has continued to experience occasions when her car has been blocked. She filed a schedule setting out 21 occasions between May 31 and October 18 when she says this occurred. On all occasions, except two, the time of the event is stated to be between 4:06 pm and 8:03 pm. The exceptions are September 23 when the time is stated to be 1:28 pm and October 1 at 10:57 am.

The landlords disputed the accuracy of this schedule.

The tenant's evidence is that the longest time for which her car was blocked was half an hour. This occurred on June 8 when the male landlord and another person stood by the visitor's motor vehicle and visited for about thirty minutes before the visitor left. The tenant said she had a social engagement scheduled but when she saw that her exit was blocked she changed it to another evening. She did not ask the landlord or the guest to move the vehicle before changing her plans.

The tenant testified that on September 10 she heard a visiting driver say to the female landlord, "Do I really have to pull forward? I'm already late." to which the landlord replied, "Suit yourself." The visitor, who the tenant says was either dropping off or picking up one of the landlord's children, did not pull into space available for parking but blocked the area for about five minutes before they left.

She testified that on October 18 the landlord's truck blocked the exit out of the parking area from 5:17 pm to 5:35 pm. She had a dinner appointment scheduled but when she saw the landlord's truck in the way, she changed her dinner date.

The tenant testified about other occasions when her motor vehicle was blocked for twenty to thirty minutes but she could not recall whether she had planned to go anywhere at that time or not. There were still other occasions when she said the area was blocked for one to ten minutes.

The tenant testified that she has never asked the landlords to move a motor vehicle when it has blocked her motor vehicle for two reasons:

- She pays for parking and expects to be able to get in and out of her parking area when she wants.
- She finds the male landlord intimidating.

The tenant testified that these events are a huge inconvenience for her and this situation is very stressful for her.

The landlords testified that they both work outside the home and the tenant usually has the property to herself from 8:00 am to 4:00 pm. The female landlord is a movement therapist and maintains a small studio on the property where she sees some clients.

The landlords have two children; a fourteen year old girl and a ten year old boy. Their daughter plays hockey, soccer and is the only female ice hockey official on the coast. Their son plays rep hockey and lacrosse. In addition to their sports activities, their children have active social lives. All of these activities require the children to be picked up and dropped off at their home.

The landlords describe themselves as very social people with lots of friends and company. They describe their home as busy and active.

The landlords describe the tenant as "reclusive". They say that have seen her on only about three occasions since May. The female landlord testified that she has never seen the tenant's car leave the parking area after 5:00 pm in the past ten months.

They say that prior to the last hearing the tenant was always taking pictures of their children and the children's friends; since then she has been taking photographs of everyone who comes to the yard. The female landlord's clients now walk up the driveway instead of parking in the parking area because of encounters with the tenant and some of their friends will no longer allow their children to come into the yard.

The landlords' evidence is that since the last hearing they have instructed all their friends and relatives not to block the tenant's car and they have also placed a sign in the parking area asking visitors not to block the tenant's car.

Analysis

Section 67 of the *Residential Tenancy Act* allows an arbitrator who has found that a party has suffered damage or loss as a result of another party not complying with the Act, regulation or tenancy to order the offending party to pay compensation to the injured party. Section 7 obliges any person claiming compensation for damage or loss to do whatever is reasonable to minimize the damage or loss.

The tenant asks that since the last order has not been honoured by the landlords that she be granted a monetary order equal to the amount she paid to prepare her evidence for that hearing, \$91.62.

The *Residential Tenancy Act* does not allow an arbitrator to make an order compensating any party for the costs of preparing or serving their evidence. Accordingly, the tenant's claim for reimbursement of the costs of postage, photocopies, photographs and notary public fees must be dismissed. The requirement for payment of a filing fee by the tenant was waived by the Residential Tenancy Branch both on this application and her previous application.

I could still award damages if I found that the landlords had breached the agreement and that the tenant has suffered a loss as a result. The evidence does not disclose either. I find that the landlords have made substantial efforts to ensure that the tenant's acre is not blocked. Of course, nothing in life is perfect and there have been some occasions when the tenant's car is blocked but by her own evidence, this has not happened very often or very long. I also find that the tenant has not suffered any damage or loss. At the most she has experienced some inconvenience for up to half an hour on a small number of occasions. Further, she has made no effort to minimize the inconvenience by asking the landlords or the guest to move their motor vehicle on those few occasions when she actually intended to go somewhere.

Accordingly, the tenant's claim is dismissed.

The landlords filed a copy of a letter they gave to the tenant purporting to end the tenancy at the end of the term. Both parties are strongly urged to talk to an Information Officer with the Residential Tenancy Branch at the earliest opportunity about the proper procedures for ending a tenancy.

Conclusion

The tenant's application is dismissed in full.

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 31, 2013

Residential Tenancy Branch

