# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Re/Max First Realty Property Management Group
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes MNDC, FF, O

Introduction

This was an application by a tenant for compensation for the landlords' breach of his tenancy agreement, right of quiet enjoyment and moving expenses. All parties attended the hearing

Issue(s) to be Decided

Did the landlords breach the tenancy agreement and if so is the tenant entitled to any compensation or relief?

Background and Evidence

The landlords admitted service of the Application for Dispute Resolution. The tenant testified that he entered into a tenancy agreement on December 1, 2013 for a fixed one year term with rent in the amount of $ 1,300.00. The tenant testified that although he signed a form "K" purporting to incorporate the strata rules and regulations into his tenancy, he did not receive a copy until March 20, 2014 after he requested it. The tenant submitted that he was allotted two parking spots as part of his tenancy: one outdoor and one in a garage. The tenant preferred to park his truck outdoors. The tenant received notifications commencing on March 18, 2014 requesting that he park his truck indoors only, pursuant to the strata rules. The tenant objected as he submitted that the rule applied only to the strata owners.

The tenant also testified that he received a Notice of Entry for Inspection from the landlords which was contrary to the Act, the Charter of Rights and Freedoms and his privacy rights. He submits that that the stated purpose of the landlords as a "walk through inspection" was unreasonable and a breach of his right to quiet enjoyment. The tenant submits that all of the above were breaches of his tenancy agreement causing it to end and therefore he seeks compensation amounting to $ 4,999.99. The tenant estimates this will be his costs of moving although he has not verified it.

The landlord's agent VL agreed as to the details of the tenancy and that it included two parking spots although not specifically mentioned in the tenancy agreement. VL testified that the tenant was given a copy of the strata rules and regulations prior to signing the tenancy agreement and that the tenant signed the agreement and the form "K" making the tenant responsible for the rules and regulations of the strata. VL testified that when the tenant requested a copy of form "K" she emailed it to him. VL submitted that section 3(12) of the strata rules requires that the tenant park his truck in the garage. VL testified that at the owner's request on March 18, 2014, she wrote to the tenant requesting that he park his truck in the garage but that he objected.

VL testified that on April 29, 2014 she sent the tenant a notice requesting an inspection on May 2, 2014. VL testified that the tenant responded "we are past social visits" and that "this was an affront to his privacy." Eventually the landlord and tenant agreed on a time and the inspection was done on May 2, 2014. VL testified that he purpose of the inspection was at the owner and new management's request check the condition of the unit and inspect for future and or past repairs. VL testified that in fact certain repairs were authorized subsequent to the visit.

The tenant responded that no repairs were made before or after the inspection and as he was just like an owner once in possession of the unit, the landlord was no longer permitted to do a walk through inspection. Such an inspection was unreasonable.

Analysis

Section 29 of the Act states:

> **Landlord's right to enter rental unit restricted**
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> **29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

I accept VL's evidence of the purpose of the intended inspection and that the inspection itself was reasonable and with adequate prior notice. I find that this was exactly the type of inspection that section 29 of the Act intended. I reject the tenant's argument that it was an unreasonable entry, as unproven and speculative. I also reject his submissions that this inspection was a breach of his Charter Rights; an unlawful search, and a breach of the Privacy Act, as ill-conceived and beyond the jurisdiction of this application. I find that the inspection was lawful and reasonable. I have dismissed his claim that the tenancy agreement ended and dismissed all claims for compensation because of any alleged breach flowing form the inspection.

I find that the tenant was bound by the strata rules and regulations as they pertain to him because he admitted to signing the requisite form "K" pursuant to the Strata Act and regulations. I reject his submission that his contract was breached to such a magnitude that he could end it because the landlords failed to give him a copy of the form "K" on the date he signed it and the tenancy agreement.

The relevant portions of the strata rules and regulations are

3 (10) No parking is permitted within the complex **by owners, tenants, occupants** or visitors except in driveways….. (my emphasis added)

3 (12) **Strata owners** of vehicles licensed as trucks or motorcycles under the Motor Vehicle Act must park those vehicles in a garage with the door closed. (my emphasis added)

I find that the strata rules and regulations are part of the tenancy agreement by operation of the form "K." I find that those rules must be strictly interpreted. I find that while section 3(10) requires owners and tenants to park in the driveways, section 3(12) requires that all strata *owners* park their trucks in the garage. Accordingly I agree with the tenant that as he is a tenant not a strata owner he is not bound by section 3(12) and

therefore not obliged to park his truck in the garage but in fact must park it on the driveway in accordance with section 3(10). The tenant has not proven that he suffered any loss of services, loss, expenses or reduction to the value of his tenancy as he was still permitted to park at his unit from March 8, 2014 and thereafter; just not in his preferred location. I have also found that the tenant has not been deprived of his quiet enjoyment because the landlords sought to enforce what they thought were their lawful rights, albeit mistakenly.

Section 8 of Residential Tenancy Policy Guidelines states:

**Material Terms**

> A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.
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> To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.
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> The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

As parking was not even mentioned in the tenancy agreement, and considering the discussions of the parties surrounding the creation of the tenancy agreement, I do not find that the ability of the tenant to park on a driveway as opposed to a garage was of such importance to both parties that it was a material term. It's clear that this was really only contemplated by the tenant. I therefore do not find that the landlords have breached a material term of the tenancy agreement so great as to permit the tenant to end the tenancy agreement. Because the tenancy shall continue, I dismissed the tenant's claim for compensation amounting to $ 4,999.99 representing his estimate of moving expenses as he is not obliged to move. I also find that as the tenant was not completely deprived of his ability to park his vehicle, and because he has not proven any other loss, that he is not entitled to any compensation as a result of this transitory loss of the ability to park his truck outdoors.

Conclusion

I have dismissed without leave to reapply all claims made by the tenant for compensation and for a declaration that the tenancy agreement is at an end because of any breaches by the landlords. As I have found that the tenant is not obliged to park his truck in the garage, I have allowed him to recover his filing fee of $ 50.00. He may deduct that amount from his next rental payment.

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 09, 2014

Residential Tenancy Branch