



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC RR FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on October 14, 2014, to have the Landlord ordered to comply with the Act, regulation, or tenancy agreement, for reduced rent for services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Tenant who provided affirmed testimony. The Tenant submitted that each Landlord was served with copies of the Tenant's application for dispute resolution and Notice of dispute resolution hearing, on October 17, 2014, by registered mail. Canada Post tracking receipts were provided in the Tenant's testimony. Based on the submissions of the Tenant I find that each Landlord was deemed served notice of this proceeding on October 22, 2014, in accordance with section 90 of the Act; and I proceeded in the Landlords' absence.

Issue(s) to be Decided

1. Should the Landlords be ordered to comply with the Act, regulation, or tenancy agreement?
2. Should the Tenant be granted reduced rent for services or facilities not provided?

Background and Evidence

The Tenant testified that he entered into a verbal tenancy agreement that began in April 2013. He stated that he is required to pay rent on the weekend just prior to or after the first day of each month in the amount of \$300.00 and at the start of the tenancy he paid \$150.00 as the security deposit. The tenancy agreement provided for one parking stall.

The Tenant described the rental unit as being one of two residential units located in a building that has two commercial units. The Tenant stated that the only access into the building is through one of two parking garages, referred to as the small and lark parking lots. The Tenant stated that from the beginning of his tenancy he had been parking in the small parking lot and was able to gain access into his unit.

The Tenant submitted that on Friday September 19, 2014 Landlord told him he had to move his car into the large parking lot because the Landlord needed to cut down some trees. The Tenant said that the Landlord opened the gate of the large parking lot and allowed the Tenant to drive in and park his car; however, the Landlord did not provide the Tenant with a key so he could not exit or re-renter the large parking lot on his own. The Tenant argued that he had to rely upon people who worked in one of the two commercial units to exit or gain access to the large lot and at times, he had to wait for someone to assist him. The Tenant stated that he was inconvenienced from September 19 to October 7, 2014 which is the date he was able to start parking in the small lot again.

The Tenant now seeks monetary compensation in the form of reduced rent for the 12 days he had to park in the large lot and an Order to have the Landlord provide him with a key to the large lot. The Tenant now feels that he should have access to both parking lots for “safety” reasons just in case the small lot is closed again.

Analysis

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement as submitted by the Tenant, are recognized and enforceable under the *Residential Tenancy Act*.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant’s use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days’ notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

In this case I accept the Tenant’s submissions that he was inconvenienced by not being provided proper access to his rental unit and parking during the period of September 19 to October 7, 2014. Accordingly, I find that the Tenant’s rent should have been reduced to accommodate the restriction to the large lot; therefore, I grant the Tenant

compensation in the amount **\$120.00** which is equal to \$10.00 per day for the 12 day period. The Tenant may deduct this one time award from his next rent payment.

The matter has since been resolved as the Tenant was given permission to start parking in the small lot as of October 7, 2014. Therefore, there is insufficient evidence to prove a future reduction in rent.

The evidence supports that the tenancy included parking and access to the small parking lot since April 2013. The Tenant did not have a need to access the large lot until the Landlord temporarily closed the small lot on September 19, 2014. The small lot has re-opened and the Tenant has returned to parking in the small lot and continues to access to his unit from the small lot. There is no evidence before me that would suggest the Tenant must have access to both parking lots for safety reasons. That being said, I find that in the future, if the Landlord directs the Tenant to park in the large lot again, the Landlord **must** provide the Tenant with a key to access the large parking lot for the entire time period that the Tenant is required to park or access the building from the large parking lot.

The Tenant has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant has been awarded monetary compensation in the amount of \$170.00 (\$120.00 + \$50.00). This one time award of **\$170.00** may be deducted off of the Tenant's next rent payment.

I HEREBY ORDER that if the Landlord directs the Tenant to park in the large lot again, the Landlord **must** provide the Tenant with a key to access the large parking lot for the entire time period that the Tenant is required to park or access the building from the large parking lot.

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: November 25, 2014

Residential Tenancy Branch

