



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OLC, 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 for the Landlord’s compliance - Section 62; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matter

The Landlord requested an adjournment so that a Witness, who was not available today, could attend in relation to the dispute over the notice to end tenancy. On October 31, 2014 the Tenant served the Landlord with an amended application adding the notice to end tenancy that is dated October 30, 2014. The Tenant states that she became aware that she did not meet the time limits to make the application.

Rule 2.11 provides that an amended application must be served on each respondent at least 14 days before the hearing. As the Tenant did not serve the amended application within the time limit provided under the Rules I find that the Tenant may not amend the application for this hearing. The Tenant is at liberty to make a new application to dispute the notice to end tenancy and I caution the Tenant to be aware of the time limit to make such an application. As the matter of the notice to end tenancy will not be determined at this hearing, I dismiss the Landlord’s request for an adjournment.

Issue(s) to be Decided

Is the Landlord out of compliance with the tenancy agreement?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on February 15, 2013. Rent of \$1,250.00 is payable monthly. The tenancy agreement provides that parking is included in the rent. There is no indication of how many vehicles are provided with the parking.

The Tenant states that although they have use of the garage, parking is provided on the driveway as the garage is used for storage by the Tenants and access by the upper tenants to the laundry. The Tenant states that the Landlord has allowed the upper tenants to park a vehicle in the driveway and that there is now insufficient room to park her own rented or guest vehicle on the driveway. The Tenant states that while there is room to pull a car in, at least one side of the car doors are unable to open. The Tenant states that although she had no car when the tenancy agreement was entered into the Tenant wanted the space for future use of a vehicle. The Tenant provided photos of the driveway and the upper tenant's vehicle parked in the driveway.

The Landlord states that the garage is for storage and that parking is provided on the driveway. The Landlord states that the Tenants did not own a car when they rented the unit and indicates that for this reason they do not have sole use of the driveway. The Landlord states that there is plenty of room for another car to park and for the occupants to get out of either side. The Landlord also states that he did not note the number of vehicles that parking was provided for in the tenancy agreement as he had meant that the parking was in the garage. The Landlord states that the driveway can accommodate 4 vehicles, parked behind and beside each other.

Analysis

Section 62 of the Act provides that an order may be made for a landlord to comply with a tenancy agreement. The tenancy agreement is clear that parking is provided. If parking is provided by way of the garage, then access to the garage cannot be impeded. Given the photos of the Tenant I accept that the parking of even one vehicle in the driveway impedes access to and from the garage. If parking is provided on the driveway and as there is no limit on the number of vehicles being provided with parking under the tenancy agreement, and as the

driveway holds four vehicles, then the tenancy agreement reasonably provides the Tenant with the right to park up to four vehicles in the driveway.

Either way, I find that the parking as provided in the tenancy agreement gives the Tenant with exclusive use of the driveway and that the Tenant has substantiated that the Landlord is not in compliance with the tenancy agreement by allowing parking of another vehicle in the driveway. I order the Landlord to immediately provide the Tenant with exclusive use of the driveway. Should the Landlord fail to act as ordered and the Tenant incurs a loss, the Tenant remains at liberty to make an application for compensation.

As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the \$50.00 filing fee and I order the Tenant to deduct this amount from December 2014 rent.

Conclusion

I order the Landlord to provide exclusive possession of the driveway to the Tenant immediately.

I order the Tenant to deduct \$50.00 from December 2014 rent.

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 06, 2014

Residential Tenancy Branch

