



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the respondent resides on February 13, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for the return of his dryer?
- b. Whether the tenant is entitled to an order permitting him to use the dryer in the rental unit?
- c. Whether the tenant is entitled to use the backyard?
- d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on February 1, 2012 when the parties entered into an oral agreement that provided that the rent was \$1500 per month payable in advance on the first day of each month. The agreement further provided that the tenant would pay a security deposit of \$750.

The rental property contains the suite in which the tenant resides and two additional suites. The tenant testified that at the time he entered into the original oral agreement the landlord agreed to provide a dryer. The landlord failed to provide the dryer and the tenant obtained a dryer from elsewhere at his own expense and installed it himself. The tenant further testified that he made significant improvements to the rental property since moving in. The landlord encouraged the tenant to use the backyard. He installed garden beds, cultivated a garden and used the backyard as a communal parking area.

The landlord denies giving his approval for the use of the dryer and denies that they agreed to provide a dryer. The landlord also denies he agreed the tenants could use the backyard.

In September 2014 the parties signed a written tenancy agreement dated September 15, 2014 which provided that the rent was \$1500 per month; the tenant paid a security deposit of \$750 on September 15, 2014. It further provided that the washer only was to be provided and it did not deal with the issue of the use of the backyard. The tenant testified he signed it as he was unaware of his rights and the landlord was threatening to end his tenancy.

The landlord has become concerned about the cost of electricity in the rental property as the costs have increased and this is a cost paid by the landlord. The landlord demanded that the tenant remove the dryer. On or about January 26, 2015 the landlord removed the dryer after the tenant fails to comply with his demands. The landlord has also told the tenant and the other tenants in the rental property that they cannot use the backyard.

The tenant testified he has made inquiries and determined the average cost of using a dryer (for the 6 people who live in the rental unit) works out to approximately \$40 per month.

The landlord has served a Notice of Rent Increase on the tenants that provides the rent was to be increased by 2.5% (approximately \$37 per month) effective June 1, 2015.

Analysis

The tenant is entitled to an order for the return of the dryer. The dryer is owned by the tenant. The landlords had no legal right to take the tenant's property.

I accept the testimony of the tenant that the landlord initially agreed to provide a dryer. Further, when they failed to provide the dryer they did not take issue with the presence of the dryer after the tenant installed it. I accept the tenant's testimony that the landlord was aware of the presence of the dryer and has used it. I determined the original oral agreement permitted the tenant to use a dryer. This is consistent with the normal provision of laundry facilities as the use of the washing machine has been provided. I further determined the original oral agreement allowed the tenant (and the other tenants in the rental property) to use the backyard on a communal basis including the use of gardens and parking.

The issue becomes whether the written agreement which was signed on September 15, 2015 is effective in taking away the right of the tenant to use the dryer and the backyard. The law provides that for an agreement to be effective there must be the exchange of consideration or something of value. In this case the written agreement dated September 15, 2014 does not include the right of the tenant to use a dryer and use the backyard. Thus the agreement has taken away rights which were previously held by the tenant. However, the landlord has not given the tenant anything of value to support the reduction in services. Had the landlord given the tenant a reduction of rent or provided additional services the agreement may have been valid.

The Residential Tenancy Act includes an obligation on the landlord to ensure that all tenancy agreements are in writing. If the landlord did not wish the tenant to have the use of a dryer it was incumbent on the landlord to include that provision in the agreement at the time the tenancy began. As a result I determined the written tenancy agreement is not valid to the extent that it excludes the right of the tenant to use a dryer and use the backyard for normal use.

Orders:

As a result I made the following orders:

- a. I order that the landlord return the dryer to the tenant.
- b. I further order that the tenant be permitted to use the dryer in the rental unit.
- c. I further order that the tenant be permitted to use the backyard in common with the other tenants in the rental property and this includes the right to parking.
- d. I ordered that the landlord pay to the tenant the sum of \$50 for the cost of the filing fee such sum may be deducted from future rent.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: March 04, 2015

Residential Tenancy Branch