



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue to be Decided

Is the tenant entitled to a monetary order as a result of the landlord's actions in having her vehicle towed from the residential premises?

Background and Evidence

This tenancy began January 1, 2003 as a month to month tenancy and has continued until the date of this hearing. The tenant sought \$225.00 from the landlord. The tenant testified, supported by documentary evidence, that her car was towed from the residential premises on December 15, 2014. The tenant testified that she paid "over \$225.00" in towing fees. She did not have receipts or other documentary evidence to confirm these payments. The tenant testified that she had received a promise from the former property manager that she would be able to park her unlicensed car in visitor parking. That property manager did not attend this hearing as a witness for either party.

The tenancy agreement, an addendum to that agreement and policy regarding parking for the landlord's housing society was submitted as evidence for this hearing. The landlord referred to these documents, and highlighted the following;

- the tenancy agreement indicates that no parking is included with the tenant's rental unit;
- the tenancy agreement addendum refers to a policy manual for the housing society to clarify parking policies and;
- the addendum to the tenancy agreement states that, "The landlord is not responsible for providing parking spaces for use of the tenant. If parking is available, the tenant will enter a parking contract with the landlord".

In their testimony, both landlord and tenant agreed that there was no parking contract in place for this rental unit.

The housing society policy manual section regarding parking indicates that tenants may apply for a parking space; that the space is \$55.00 per month; and that parking stalls are not to be used for storage or repairs. The manual indicates that, "tenants who continue to park in visitor parking stalls or who violate any provision of this policy, after being given one warning, will have their vehicle towed at their expense" and that, "The Society may tow any vehicles improperly parked at the owner's expense". It also states that all vehicles must have up-to-date vehicle insurance.

In her testimony, the tenant testified that she had read and signed the residential tenancy agreement as well as its addendum. She also testified that she was aware of the policies of the building, including the policy regarding parking. The landlord testified that the tenant is a long term resident and the landlord gave the tenant several opportunities to move her vehicle from unauthorized parking spots before her vehicle was towed. The landlord provided undisputed testimony that the tenant had parked this same car blocking pathways, in laneways, and in other tenant's paid parking spots as well as a variety of visitor spots. The landlord testified that, on each prior occasion, the tenant had been asked to move her vehicle and it had not been towed.

In presenting her application, the tenant testified that she was uncertain the date that she bought her car; the date the car was first parked on the residential premises or the date that it was towed. The tenant testified that her vehicle was parked in a visitor parking spot for approximately two days prior to it being towed. She testified that she had the "intention of getting insurance" but she had not done so.

Analysis

The tenant has applied for a monetary order pursuant to section 67. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant, the tenant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant testified that she had paid towing fees. This testimony was not disputed by the landlord. However, the tenant offered no documentary evidence to support her testimony and to verify the amount of the towing fees. Therefore, I find the tenant has not sufficiently proven that she incurred a verifiable cost. Furthermore, I find the tenant has not proven that the landlord acted in a way that violated an agreement or contravened the *Act*. I find the landlord acted in accordance with the relevant residential tenancy agreement, the addendum to that agreement and the related housing society policies. The parking rules are clearly outlined and highlighted within the society's parking policies and I find that the tenant was aware of those policies. I find the tenant knew or should have known that her vehicle would be towed if she continued to park in unauthorized parking spots. The tenant stated she received permission from a former property manager to park in an otherwise unauthorized manner. This point was disputed by the landlord and the tenant provided no supporting evidence with respect to this claim.

The tenant testified that she parked her uninsured vehicle for at least two days in a visitor parking spot while aware of the parking policies of the residential premise that she has resided in for over a decade. I accept, particularly in light of the tenant's own testimony that the tenant failed to comply with the parking policies at the residential premise. I accept the landlord's undisputed sworn testimony that the tenant was given warnings and opportunities with respect to her unauthorized parking by the landlord.

The tenant has not met the burden of proof in showing that she suffered damage or loss as a result of the actions of the landlord. Therefore, I find that the tenant is not entitled to compensation for her towing fees.

Conclusion

I dismiss the tenant's application for a monetary award in its entirety.

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 27, 2015

Residential Tenancy Branch

