



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC O PSF FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 66;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's application for dispute resolution package. The tenant withdrew his application to cancel a 1 Month Notice to End Tenancy, making his request for more time to make his application moot. He withdrew this application, as well.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord to provide services or facilities required by law? Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

Both parties agreed that this tenancy began on October 15, 2013 for a 6 month fixed term. After that date, the tenancy continued on a month to month basis with a rental amount of \$800.00 payable on the first of each month. The residential tenancy agreement indicated that 1 parking stall and cablevision as well as other services

including heat and hot water were included in the rental amount. The landlord testified that he continues to hold a \$400.00 security deposit paid at the outset of the tenancy.

The tenant submitted a copy of the tenancy agreement for this hearing as well as an addendum (or “addition” to the tenancy agreement) created by the tenant. That addendum included but was not limited to the following;

- mailbox with lock be placed at front door;
- tenant to share with other tenants putting out garbage for pick-up;
- parking on driveway;
- locks and keys changed before moving in;
- front yard and back yard access... tenant may have a small garden using planters; and
- tenant watching television late at night...although tenant could use head-phones this is not always convenient nor comfortable.

Written below the signatures on the addendum (or “addition”) to the tenancy agreement, the tenant wrote;

- power line networking to be installed;
- shaw cable box;
- motion detector and camera in driveway overlooking my car.

The landlord submitted, with respect to the “addition” written by the tenant, that these items were requests the tenant made for the unit prior to his tenancy and did not present an ongoing obligation for the landlord. The landlord also submitted that he went to some lengths to ensure the unit was satisfactory for the tenant.

The tenant testified that his remaining application was filed to require the landlord to provide; landscaping services, a designated parking stall, and better internet access. The tenant agreed with the testimony of the landlord that the landscaping matter (cutting of the grass) had been resolved since he filed this claim. The tenant testified he is no longer seeking a remedy with respect to the landscaping although he stated incidentally that he would like to “be able to sit in the front yard on a lawn chair”.

The tenant testified that there are at least 4 parking spots in front of the residential premises and that he has the permission of the landlord to park in those spots. The tenant would like the landlord to be ordered to provide a designated parking spot stating in his testimony that on occasion, all of the parking is filled by the tenants and their guests. He further testified that when he tried to put a sign in the driveway that designated his parking spot, the landlord removed the sign.

The landlord testified that there is an abundance of space to park in the back of the residential premises. He testified that the entire back area of the premises is paved and at least 7-8 cars can park at the residence. He testified that the tenant has access to the parking as a result of the tenancy agreement and that he believes that there is sufficient parking for all of his tenancy. The landlord also testified that he has fulfilled his obligation to provide parking.

The tenant testified that his documentary evidence submitted supported his claim that the landlord has not taken the agreed-upon steps to allow him satisfactory internet service. He testified that the landlord did not install a "power line networking" as agreed upon. He testified that his internet sometimes cuts out and that his wireless phone receives interference from time to time because of the placement of the modem in the upstairs rental unit.

The landlord testified that the tenant was permitted to access the wireless internet that had been set up upstairs in the residential premises (a 2 rental unit detached house). The landlord testified that, early in the tenancy, he allowed the tenant (who resides in the basement unit) to provide "power line networking" to be set up in the upper unit so that he would have better internet access. The landlord provided undisputed sworn testimony that he has called the internet service provider on several occasions and had them attend to confirm the internet service is in working order based on the complaints of the tenant. The landlord testified that, after setting the "power line networking" up, the tenant eventually disconnected it.

Analysis

Section 27 of the *Act* provides that a landlord cannot restrict a service or facility in the following circumstances,

- 27** (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

To determine the materiality of a term (for the tenant to make a claim with respect to section 27(1)(b)), I must focus upon the importance of the term in the overall scheme of the tenancy agreement. It falls to the person relying on the term, in this case the tenant, to present evidence and argument supporting the proposition that the term was a material term. 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. There is no agreement with respect to the materiality of parking and internet service between the two parties in this case.

The question of whether or not a term is material and goes to the root of the contract must be determined by the facts and circumstances surrounding the creation of the particular tenancy agreement in question. Simply because the parties have put in the agreement that one or more terms are material is not decisive. An arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

The tenant submitted that parking is either an essential or material term of his tenancy. He submitted that not being provided with a designated parking spot equates to the landlord failing to fulfill the obligation of the residential tenancy agreement. The tenant submitted no objective evidence regarding the lack of availability of parking space at the residential property. The tenant made no argument as to the details of this lack of parking, the frequency or its impact in a given situation. The landlord disputed the tenant's claim. I find that the tenant has not shown that he is unable to park on the premises or, more relevant, that the landlord has failed to provide a parking spot in compliance with the residential tenancy agreement. The residential tenancy agreement indicates 1 parking spot and no further details or requirements on the provision of a parking spot. I therefore decline to make any order with respect to the provision of parking at the residential premises.

The tenant also submitted that the landlord has restricted a service or facility by failing to provide satisfactory internet service. The landlord's undisputed testimony was that he has had service providers to the residence on more than one occasion at the request of the tenant. The landlord also provided undisputed sworn testimony that he allowed the tenant to install a device to increase the wireless signal. The landlord's undisputed sworn testimony was that the landlord has taken all steps that he can take in providing access to the internet access and the assistance of the internet service providers. I do not find that the landlord has failed to act in regard to any described issue by the tenant.

I do not find that the landlord has failed to provide internet service. I note that the tenant's testimony was that he would sometimes lose his service or that it would be affected by other tenant's use of the internet. The landlord has (NO) control with respect to this type of issue and I decline to make any order with respect to the internet at the residential premises. I also note that the requirement under the Act is to ensure the provision of essential or material services. I do not find that a certain quality of internet service is either essential or material to this tenancy agreement.

Conclusion

The tenant's application to cancel the notice to end tenancy and for more time to do so were withdrawn.

I dismiss the tenant's application for an order to the landlord to provide services or facilities as required by the Act or the residential tenancy agreement without leave to reapply.

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: January 11, 2016

Residential Tenancy Branch

