



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ, OLC, RR, FF

Introduction

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

- cancel a 2 Month Notice to End Tenancy for Landlord Use of Property ("2 Month Notice"), pursuant to section 49.1;
- order the landlord to comply with the *Act*, regulations or tenancy agreement, pursuant to section 62;
- authorization for the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and landlord along with the landlord's agent, SB (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order for the landlord to comply with the *Act*, regulations or tenancy agreement?

Is the tenant entitled to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Neither party submitted a written tenancy agreement but both testified that the tenancy began on September 2, 2012 on a month-to-month basis. Rent in the amount of \$675.00 is payable on the first of each month. The tenant remitted \$350.00 for the security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant confirmed receipt of the landlord's 2 Month Notice dated May 12, 2016 by way of posting to his rental unit door. Although the 2 Month Notice indicates the reason for issuance is that the tenant no longer qualifies for a subsidized rental unit the landlord testified the reason for the 2 Month Notice was related to parking. The landlord testified that the rental unit is not subsidized; the landlord chose this option on the 2 Month Notice because she could not find a reason related to parking. Currently, the tenant parks an uninsured vehicle in the driveway and another on the street. The landlord verbally agreed to allow the tenant to park his vehicle in the driveway two years ago but since that time the landlord has gained additional tenants with parking needs and a family member with parking needs. Consequently the landlord requires the tenant to remove his uninsured vehicle from the driveway. The landlord testified that the signed tenancy agreement does not include any parking but acknowledged a verbal agreement at the start of the tenancy allowed for parking of one vehicle.

The tenant confirmed the rental was not subsidized and testified that the landlord's attempt to end the tenancy is based on a rental rate increase. The tenant testified that previous to the 2 Month Notice the landlord contacted him and requested rent in excess of the allowable amount. The landlord was advised of the allowable amount and instead of raising the rent the landlord issued the 2 Month Notice. The tenant testified that he is willing to move his uninsured vehicle from the driveway provided he receives a rent reduction of \$25.00 per month to cover the cost of storage.

The tenant is also seeking to recover the \$100.00 filing fee for this application from the landlord.

Analysis

Section 49.1 of the *Act* allows a landlord to end a tenancy if the tenant no longer qualifies for a subsidized rental unit. Because the onus is on the landlord to prove the tenant no longer qualifies for a subsidized rental unit and the landlord acknowledged the unit was not subsidized, I find the landlord has failed to satisfy the burden of proof and allow the tenants application to cancel the 2 Month Notice.

Despite the absence of parking on the tenancy agreement, I find based on the landlord's own testimony that at the start of the tenancy the landlord verbally agreed to allow one parking space in the driveway. "Tenancy agreement" as defined under section 1 of the *Act* means 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. Based on the oral agreement respecting parking, I order the landlord to comply with the tenancy agreement and allow the tenant to park one vehicle in the driveway. If the landlord fails to provide parking in accordance with my order, the tenant may bring a further claim against the landlord for loss of use and other appropriate relief.

As the landlord has provided the parking as agreed to under the tenancy agreement and has been ordered to continue to do so; I do not authorize the tenant to reduce rent to cover storage fees.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenant's application to cancel the 2 Month Notice is upheld.

I order the landlord to provide driveway parking for one vehicle to the tenant. If the landlord fails to provide parking in accordance with my order, the tenant may bring a further claim against the landlord for loss of use and other appropriate relief.

The tenant is authorized to deduct \$100.00 from future rent for the filing fee.

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: June 21, 2016

Residential Tenancy Branch