Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on June 14, 2016. The Tenant filed seeking a $469.92 Monetary Order; an Order to have the Landlord comply with the *Act,* regulation, or tenancy agreement; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by two agents for the Landlord (the Landlords) and the Tenant. Each person gave affirmed testimony. The application named one corporate landlord as the respondent; therefore, for the remainder of this decision, terms or references to the Landlord importing the plural shall include the singular and vice versa, except where the context indicates otherwise.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Residential Tenancy Branch Rules of Procedure 6.10 stipulates disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing that is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Notwithstanding the Head Office Landlord`s confirmation that she understood the expectations for conduct, as described above, she continued to interrupt the proceedings and speak out of turn. After several warnings I informed the Landlord that if she interrupted the proceedings again she would be excused from the hearing. At 1:53 p.m. the Landlord interrupted the proceeding yet again and I ordered her be removed from the hearing. The hearing continued in her absence, pursuant to Rule of Procedure 6.10.

The Landlords confirmed receipt of the Tenant`s application for Dispute Resolution and hearing documents. The Landlords argued the Tenant had not served the documents upon them within the required timeframe as the postmark on the envelope indicated he served them on June 27, 2016 and his application was filed on June 15, 2016.

The Landlords testified that they have had an opportunity to review the application and they submitted evidence in response; however, they were told the evidence was late. The Landlords stated they were prepared to proceed with the hearing as scheduled if their documentary evidence would be considered.

The Tenant confirmed receipt of the two documents submitted by the Landlords; however, he argued that the two documents were not served to him as evidence. He asserted that he had go to the Landlord`s office in order to pick up a copy of the notice regarding cleaning up the parking area and when the Landlord refused to give it to him he had to call the police. The Tenant stated the second document that listed unit numbers and tenant`s names was slid under his door.

The Landlords confirmed they did not serve the two documents as evidence together on the same day. They argued they personally handed the second document listing tenant`s names to the Tenant and did not slip it under his door.

Section 59(3) of the *Act* provides except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

The Tenant requested more time to summit documentary evidence in support of his application. He indicated he had been too busy to compile his information and he wanted to submit a copy of a police report, which cannot be obtained in a quick fashion.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants which states:

1. *Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch **before the hearing**. Instructions for evidence processing are included in this package. Deadlines are critical.*

[Reproduced as written with my emphasis in bold text]

Rule of Procedure 2.5 provides that to the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch directly or through a Service BC office, the applicant must submit:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on at the hearing.

I declined the Tenant's request to submitted additional evidence as he did not prove there were extenuating circumstances that prevented him from submitting his evidence in accordance with the Rules of Procedure, as listed above.

Administrative Tribunals, such as this Residential Tenancy Branch (RTB) proceeding, were created to provide a process for dispute resolution which upholds the principals of natural justice in a more expedient fashion than want was traditionally offered through the courts systems.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

After consideration of the above, and pursuant to section 62(2) of the *Act,* I find it would not be in the best interest of either party to adjourn or delay this process. Each party confirmed receipt of the documents served by the other, albeit not within the required timeframe or format, and the Landlords confirmed they were prepared to proceed with their response to the application. Accordingly, I proceeded with the hearing as scheduled.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant proven entitlement to monetary compensation?
2. Should the Landlord be ordered to comply with the *Act,* Regulation and tenancy agreement to grant the Tenant access to the parking garage and a parking stall?

Background and Evidence

The Tenant entered into a 6 month fixed term tenancy agreement which began on December 1, 2015 and switched to a month to month tenancy after May 31, 2016. Rent of $1,500.00 is payable on or before the first of each month and on November 13, 2015 the Tenant paid $750.00 as the security deposit.

The Tenant testified that when he entered into this tenancy agreement with the previous residential manager he was told he was entitled to one parking stall. He stated he paid $50.00 cash to the previous manager as the deposit for the garage door FOB. He asserted she told him to park anywhere in the lower level of the parking garage as the parking stalls do not have numbers assigned to them.

The Tenant submitted sometime after 8:30 a.m. on June 13, 2016 the FOB for the parking garage door was changed. He stated he is an electrician with the union and works a night shift from 1:00 a.m. to 8:00 a.m. with variable wage rates that start at $65.01 per hour and up, dependant on his shift. He stated that when he returned home from work the morning of June 13, 2016 he was able to enter the parking garage.

The Tenant asserted that when he attempted to leave the parking garage at 11:00 p.m. the evening of June 13, 2016 he was not able to exit the garage as his FOB would not open the garage door.

The Tenant argued that when he was locked inside the garage he attempted to call the new resident manager and the head office manager and no one would answer his calls. He said he called the police in attempts to get out of the garage so he could get to work. He was not successful and ended up missing a shift. He then went to the front lobby, an entrance that he never uses as he always comes and goes through the parking garage, and he saw a Notice posted at the front lobby regarding the garage FOB change. He argued there was not a Notice regarding the change posted on any of the doors that he used or in the elevator.

The Tenant argued he had never been served a copy of the notice regarding the parking lot cleaning and FOB change. He asserted the only notice he received was a notice that the Landlord would be testing the fire alarm system. He stated he now seeks to recover his lost wages and to be given access to the parking garage again.

When asked how he served the notices regarding the parking lot cleaning and key FOB change the resident manager initially stated that he posted 5 notices around the building, on doors and at the lobby area, on June 9, 2016. As the hearing continued the

resident manager and head office manager changed their submission to state they had served notice to each individual rental unit.

The Landlords testified there were 54 units in the building and currently 14 units have parking stalls. They confirmed that their submission that 14 units currently had parking stalls was based on the number of tenants who signed up for a parking stall after the key FOB was changed on June 13, 2016.

I asked the Landlords why they did not contact each of the Tenants who parked in the parking garage to provide them with a new FOB prior to changing the door and FOB. The Landlords responded that their previous resident manager had destroyed the Landlord's tenancy files, which were kept at the building, when the previous manager was dismissed from her position. The Landlords argued they did not have records on site that would indicate which tenants were parking in the garage. The new resident manager began working at this building in January 2016.

The Landlords testified the previous garage door required a FOB to enter and exit the garage and on June 13, 2016 they installed a new door and new FOB system. They asserted the tenants were advised they had to pay a $45.00 key FOB deposit for the new FOB and sign a parking agreement for $25.00 per month or prove their existing tenancy provided for parking. They testified they would not provide this Tenant with access to the garage or a new key FOB unless he could provide them with a receipt proving he paid the alleged $50.00 deposit to the previous manager and prove his tenancy agreement provided for parking. In absence of the foregoing, the Landlords told the Tenant that he would have to pay the $45.00 FOB deposit and sign the agreement and pay $25.00 per month for parking.

The Landlords argued that they had stored copies of all of the tenancy agreements in their offsite storage facility; however, it would have been too labor intensive to go search through those records to determine which tenants had parking included in their rent. As a result, the Landlords stated they decided to simply put up 5 notices around the building; change the garage door and FOB; and wait for the tenants to approach them to sign the parking agreement and pick up a new FOB.

The Tenant disputed all of the Landlords' submissions and argued he had to call the police before the resident manager would provide him with a copy of the notice after he had been locked in the garage. The Tenant confirmed that his written tenancy agreement simply stated the monthly amount payable of $1,500.00 and the previous resident manager made no notation regarding parking or the $50.00 deposit he had made.

Analysis

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 1 of the *Act* defines "service or facility" which are provided or agreed to be provided by the landlord to the tenant of a rental unit and includes parking spaces and related facilities.

Section 27 of the *Act* stipulates as follows:

(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.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I favored the submissions of the Tenant over the Landlords' submissions. I favored the Tenant's submissions as they were forthright, consistent, and credible. I found the Landlords submissions to be inconsistent with regards to the manner in which they said they distributed the notices relating to the parking garage door and FOB change.

Estoppel is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial. The rationale behind estoppel is to prevent injustice owing to inconsistency.

It was undisputed the Tenant was in possession of the previous parking garage FOB and had been parking in the garage for 6 months, since the onset of his tenancy, for no additional charge. By their own submissions, the Landlords testified their previous resident manager destroyed the Landlords' records when she was dismissed from her employment. Therefore, I find it is reasonable to conclude the previous manager either destroyed the record of the Tenant's FOB deposit or she neglected to record the deposit. Furthermore, I accept the Tenant's submissions that park was included in his monthly rent payment; despite it not being noted as such on the tenancy agreement. As such, I accept the Tenant's submission that he paid the former manager a $50.00 key FOB deposit.

I further find, pursuant to section 62 of the *Act,* it is reasonable to conclude the Tenant had been granted access to the parking garage as a service or facility provided for by the previous residential manager, a service provided at no extra cost and therefore, I find the parking facility was included in his total monthly rent as a material term of the Tenant's tenancy agreement. As such I find the Landlords are estopped from changing the Tenant's right to access and use the parking garage, pursuant to section 27(1) of the *Act.*

Based on the above, I find the Landlords have breached section 27(1) of the *Act* as they have restricted the Tenant's access to the parking garage; refused to provide him with a new FOB; demanding a new deposit; and have insisted he pay a $25.00 monthly payment. That breach caused the Tenant to suffer a loss of one day's wages and has him currently parking his vehicle on the street; as such I issue orders to the Landlords as follows:

(1) The Landlords are hereby ordered to transfer the previously paid $50.00 FOB deposit to the deposit for the new key FOB and provide the Tenant with the new key FOB to enter and exit the parking garage **forthwith**;

(2) The Landlords are ordered to comply with section 27(1) of the *Act;* not restrict the Tenant's access to the parking garage; and not charge the Tenant any fee for use of the parking garage for the duration of his tenancy.

In regards to the Tenant's request for compensation for lost wages, I find the Tenant submitted insufficient evidence to prove he was scheduled to work after 11:00 p.m. on June 13 or the early morning hours of June 14, 2016. Furthermore, there was insufficient evidence to prove the Tenant's wage. Accordingly, I dismiss the Tenant's request for $469.92 monetary compensation, without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenant partially succeeded with their application; therefore, I award recovery of the filing fee in the amount of **$100.00**, pursuant to section 72(1) of the Act.

The parties are reminded of the provisions of section 72(2)(a) of the *Act*, which authorizes a tenant to reduce his rent payments by any amount the director orders a landlord to pay to a tenant, which in these circumstances is $100.00.

Conclusion

The Tenant was partially successful with his application and was awarded recovery of the filing fee. The Landlords were issued orders to provide the Tenant access to the parking garage forthwith, at no extra charge, as stated above.

This decision is final, legally binding, and 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: July 22, 2016

Residential Tenancy Branch