



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the 10 day Notice to End Tenancy dated June 12, 2016
- b. An order to recover the cost of the filing fee.

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 10 day Notice to End Tenancy was placed in the Tenant's mail slot on June 15, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on Building Manager on June 15, 2016. 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 cancelling the 10 day Notice to End Tenancy dated June 12, 2016?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on September 1, 2013. The tenancy agreement provided that the tenant(s) would pay rent of \$1100 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$550 at the start of the tenancy. The rent has now been increased to \$1150.

The landlord testified there is a second agreement in which the tenant agreed to pay \$20 per month for parking.

The tenant testified he agreed to pay the \$20 per month for the months of November 2015, December 2015 and January 2016 as he was going to be out of the country for an extended period of time. He paid the additional \$20 per month. When he returned he advised the Building Manager that he was no longer interested in the parking offered by the landlord and that he was cancelling this agreement as there is ample parking on the street.

The 10 day Notice to End Tenancy alleges the tenant failed to pay \$60 in rent that was due on January 1, 2016. The landlord testified this was for parking he used in the summer of 2015. The tenant denies he agreed to purchase parking from the landlord during the summer of 2015 and that he used the parking during this time.

Analysis:

After carefully considering all of the evidence I determined the landlord failed to prove the tenant owed any amount for parking. The cancelled cheque for January 2016 shows the additional \$20 was paid during that time period. I accept the testimony of the tenant that he did for and used the landlord's parking for the months of November 2015, December 2015 and January 2016. The landlord failed to prove the tenant agreed to pay for parking in the summer of 2015 or prior to November 2015. I accept the testimony of the tenant that he cancelled the parking effective February 1, 2016.

Further, I determined that a parking fee when it is under a separate agreement cannot be considered to be rent and is not the basis of a 10 day Notice to End Tenancy for non-payment of rent.

Determination and Orders:

As a result I ordered that the 10 day Notice to End Tenancy dated June 12, 2016 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the tenant has been successful with this application I ordered that the landlord pay to the tenant the sum of \$100 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: July 21, 2016

Residential Tenancy Branch

