



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, FF

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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

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

Preliminary Issue –Settlement

During the hearing the landlord and tenant agreed the tenancy would end February 1, 2017 at 1:00 p.m. Consequently, the tenant is no longer seeking cancellation of the 2 Month Notice and this portion of the tenant's application is dismissed without leave to reapply.

Section 63 of the *Act* provides that if the parties settle their dispute during a hearing the Director may record the settlement in the form of a Decision or an Order. Pursuant to the above provision, discussion between the parties during the hearing led to a settlement / resolution. Specifically, the parties agreed and confirmed as follows;

1. the tenant and landlord agree that this tenancy will end no later than Wednesday, February 1, 2017 at 1:00 p.m., and,

2. the landlord will receive an order of possession effective February 1, 2017 at 1:00 p.m.

So as to perfect this settlement agreement, I grant the landlord an order of possession, effective 1:00 p.m. February 1, 2017.

Preliminary Issue - Amendment

In the details box of the tenant's application he instructs the reader to see the attached letter. In the attached letter the tenant clarifies his application which includes the following;

Another form of harassment was when an unlicensed vehicle was placed in my parking spot which according to tenancy agreement was included on site.

[Reproduced as written]

The tenant clarified that he wished to amend the tenant's application to include an order for the landlord to comply with the *Act, Regulation* or tenancy agreement in relation to his designated parking.

I find that the landlord should reasonably have known that the tenant was seeking this order based on the text written in the attached letter of his application. In accordance with section 64(3) of the Act, I amend the tenant's application to include a request for an order for the landlord to comply.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

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

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on June 1, 2006 on a month-to-month basis. Rent in the amount of \$720.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$350.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The parties agreed that the landlord removed two antennas belonging to the tenant. The tenant testified that the removal damaged the antennas beyond repair, whereas the landlord testified that only the cables were damaged. The tenant seeks compensation in the amount of \$400.00 for the antennas.

During the hearing the tenant testified that since October 15, 2016 he no longer has access to his parking spot and has had to park on the street. The tenant provided a copy of the tenancy agreement and photographs to support his position. The landlord did not provide a reply in relation to the parking.

Analysis

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 this case, the onus is on the tenant to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant seeks a monetary order in the amount of \$400.00 to compensate for the two antennas.

Although the parties agree the landlord removed the antennas, the tenant has provided insufficient evidence to establish the antennas were damaged beyond repair or that the loss equates to \$400.00. For these reasons, I find the landlord has failed to meet the test above and dismiss the tenant's claim to recover \$400.00 for the antennas.

Pursuant to the tenancy agreement the tenant is entitled to parking for one vehicle. Although the tenancy agreement does not specify the location of the parking, it has been established by the undisputed testimony of the tenant that the tenant has parked on the residential property since June 1, 2006. Therefore I order the landlord to immediately provide the tenant with parking on the residential property until such time that the tenancy ends.

As the tenant was not entirely successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenant and landlord agree that this tenancy will end no later than Wednesday, February 1, 2017 at 1:00 p.m. So as to perfect this settlement agreement, I grant the landlord an order of possession, effective 1:00 p.m. February 1, 2017. The tenant's application to cancel the 2 Month Notice is dismissed without leave to reapply.

The tenant's application for a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement is dismissed without leave to reapply.

The landlord is ordered to provide the tenant with parking on the residential property until such time that the tenancy ends.

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: December 23, 2016

Residential Tenancy Branch