



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, O

Introduction

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

- a. An order prohibiting the landlord from re-possessing a second inside parking space?
- b. An order repairing or replacing the garage door?
- c. 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.

The matter was set for hearing on December 9, 2016. The tenant failed to attend. However, the tenant's application for review was successful and the matter was set for hearing on today's date.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord. 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 prohibiting the landlord from re-possessing a second inside parking space?
- b. An order repairing or replacing the garage door?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenant moved into the rental unit in 2005. He subsequently entered into a tenancy agreement with the landlord in his name in 2007 after his girlfriend moved out. The tenancy agreement provided that the tenant was renting one inside parking space. About 2 years ago landlord rented a second parking space to the tenant at his request. The rental of the second inside parking space is not evidenced in writing. The present rent is \$1830 plus \$50 per parking space. He has paid \$100 for the two parking stalls (\$50 each) for the last two years. The tenant(s) paid a security deposit of \$700 at the start of the tenancy.

On September 22, 2016 the landlord gave the tenant notice in writing that the second parking space was no longer available to rent to him effective December 1, 2016 as it was necessary to rent to another tenant. The tenant objected. While he did not use the second parking space on a regular basis he used it for friends who were visiting.

The second parking stall has been rented to another tenant as of January 1, 2017.

The Law:

The definition of "service or facility" in section 1 of the Residential Tenancy Act provides as follows: : :

"service or facility" includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:

- (a) appliances and furnishings;
- (b) utilities and related services;
- (c) cleaning and maintenance services;
- (d) parking spaces and related facilities; (my emphasis)**
- (e) cablevision facilities;
- (f) laundry facilities;
- (g) storage facilities;
- (h) elevator;
- (i) common recreational facilities;
- (j) intercom systems;
- (k) garbage facilities and related services;
- (l) heating facilities or services;

(m) housekeeping services;

Section 27 of the Act includes the following:

Terminating or restricting services or facilities

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.

Analysis

I determined the provision of the second parking space was not a service or facility essential to the tenant's use of the rental unit or a material term of the tenancy agreement. Thus the landlord has the right to terminate the service under section 27(2) of the Act provided the landlord gives the tenant 30 days written notice in the approved form. The landlord failed to use the approved form. Thus the termination was not valid. However, the landlord does have the right to terminate this service in the future. At the hearing the tenant stated that the other tenant is now using the second parking space and he did not pay the additional \$50 for the January. He stated he was no longer interested in disrupting the second tenant and regaining the second parking space if it was not on a permanent basis.

As a result I dismissed the tenant's application for an order prohibiting the landlord from taking away the inside parking space.

The tenant sought an order that the landlord repair or replace the garage door as it is too noisy. I determined the tenant failed to provide sufficient evidence to establish this claim and this claim is dismissed.

Conclusion

In summary I ordered that the tenant's application for an order prohibiting the landlord from taking back of the second parking space and for the repair or replacement of the garage door be dismissed. However, I determined the landlord contributed to the filing of this application by failing to use the approved form for terminating a facility. I determined the tenant is entitled to recover half of the cost of the filing fee or the sum of \$50.

I ordered the landlord(s) to pay to the tenant the sum of \$50 in respect of the filing fee such sum may be deducted from future rent.

This decision is final and binding on both parties.

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 26, 2017

Residential Tenancy Branch