



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Decision Codes: OCL, O, FF

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order that the landlord comply with the Act, regulation and/or tenancy agreement.
- 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 Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on March 1, 2017.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation and/or tenancy agreement?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on June 1, 2012. The present rent is \$1497 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$697.50.

The tenant seeks an order that parking was included with her tenancy and that she is entitled to a parking spot. Further, she seeks an order that the landlord has violated her

rights under section 28 of the Act that she is entitled to quiet enjoyment of the rental unit.

The rental property is a three storey walk-up. There are 11 rental units in the property. The landlord has 6 parking spots.

The written tenancy agreement does not deal with parking.

The tenant gave the following evidence:

- When she rented the rental unit the landlord agreed to provide parking for her at no extra cost. She has used the parking spot since the start of the tenancy.
- On August 11, 2016 the landlord gave the tenant notice he was now requiring that she pay \$30 a month for parking as it was not included in the tenancy agreement. The tenant did not want to dispute this at the time and paid the \$30 per month.
- In November the landlord gave the tenant notice she was not permitted to use the parking spot as of November 30, 2016 as there was a vehicle from Alberta parked in that spot and that he needed this spot for delivery vehicles.
- The tenant responded with a letter dated November 28, 2016 stating she was unaware he needed the spot for a delivery purposes, that her parking spot cannot be taken away as it was part of what was provided when she moved in.
- The parties exchanged e-mails but were not able to come to any agreement.
- The landlord allowed the tenant to use the parking spot for December 2016 and January 2017 without charge. However, the landlord demanded the tenant vacate the parking spot for February. She has not used the parking spot for February and March 2017. The landlord rented the parking spot to a third party.
- The tenant testified the car from Alberta was a friend who parked there for 5 days only.
- In November the tenant exchanged e-mails with the landlord advising she was considering moving and asking whether the landlord would permit her to vacate the rental unit with the giving of short notice. The landlord responded asking for the tenant to advise him when she was intending to leave.
- The tenant stated she is considering moving but it would require an out of province move to Alberta. She is in the process of trying to get work in Alberta and has not been able to commit herself to a certain date.
- The tenant testified the landlord has threatened he will be taking her to court but he failed to provide her with further particulars of why and what this means.
- The landlord was unsuccessful in his attempt to end the tenancy a year ago when an arbitrator cancelled the one month Notice to End Tenancy.

- The relation between the parties is strained. No one else has had their parking taken away.

The landlord gave the following testimony:

- The tenancy agreement does not provide the tenant is entitled to parking.
- In October he underwent open heart surgery and has been recovering since.
- In early December the tenant advised the landlord that she had broken up from her boyfriend and was considering moving. He indicated he was prepared to permit her to give short notice but he needed to know when she was moving. The tenant has not given notice.
- He found the situation very frustrating. He told her he was giving this problem to his lawyer for advice. He denies telling her he was going to take her to court.
- In November he told her to vacate the parking spot because of his concerns about liability issues where the car is an out of province car. He acknowledged the car with Alberta license plates was insured in Alberta.

Analysis

Tenant's Application to reinstate the Parking Space:

The definition of "service or facility" found in section

"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:

...

(d) parking spaces and related facilities;

After carefully considering all the evidence I determined that the provision of a parking space was a service or facility that was agreed to be provided by the landlord to the tenant as part of the tenancy agreement. The landlord has permitted the Tenant to use the parking spot since the start of the tenancy without charge. I determined that the landlord cannot unilaterally withdraw this "service or facility." I ordered that the landlord provide the tenant with a parking space without charge.

Tenant's Application for an order that the landlord has breached the Covenant of Quiet Enjoyment:

Policy Guideline #6 provides as follows:

"B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

I determined the tenant failed to prove the landlord breached the covenant of quiet enjoyment and this portion of her claim is dismissed for the following reasons:

- I do not accept the submission of the Tenant that the dispute between the parties over the provision of the parking amounts to a breach of the covenant of quiet enjoyment. This does not amount to a substantial interference with the ordinary and lawful enjoyment of the premises.
- I find that the landlord has been more than accommodating to the tenant with respect to her request to give short notice. The tenant has made a request and the landlord indicated he was prepared to accommodate this but he needed certainty as to when the tenant was leaving. This is not a breach of the covenant of quiet enjoyment.
- The tenant failed to prove that the landlord threatened her. A statement by the landlord that he is leaving the matter with his lawyer is not a threat that can constitute a breach of the covenant of quiet enjoyment as a party has the legal right to obtain advice from a lawyer.

Conclusion:

The Tenant has been successful with her claim for have her parking reinstated. The tenant has been unsuccessful with her claim for an order that the landlord has breached the covenant of quiet enjoyment. I determined the tenant is entitled to half of the cost of the filing fee. **I ordered the landlord(s) to pay to the tenant the sum of \$50 respect of the filing fee.**

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 final and binding on the 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: March 28, 2017

Residential Tenancy Branch