



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 and authorization to recover the filing fee for this application from the landlord pursuant to section 72

The respondent/landlord did not attend this hearing, although I waited until 1: 51 pm in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 pm. The applicant/tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions on his application.

The tenant testified that She served the landlord with his Application for Dispute Resolution ("ADR") with Notice of Hearing on April 25, 2017. She provided a Canada Post registered mail receipt and tracking information. The tenant testified that, in reviewing his package was returned to her in early May 2017. Based on the undisputed testimony of the tenant as well as the documentary evidence that proves she sent registered mail to the landlord and based on the service provisions at section 89 and 90 of the Act, I find that the landlord was deemed served with the tenant's ADR and evidentiary materials on April 30, 2017 (5 days after the registered mailing).

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation from the landlord as a result of this tenancy? Is the tenant entitled to recover her filing fee for this application?

Background and Evidence

This tenancy began on November 1, 2016 as a one year fixed term tenancy with a scheduled end date of November 1, 2017. The tenant submitted a copy of the

residential tenancy agreement for this hearing. The rental amount of \$1200.00 was payable on the first of each month by the tenant. The tenant gave notice that she would vacate the rental unit on February 28, 2017. Prior to February 28, 2017, the tenant made arrangements to move her belongings out of the rental unit and conduct a condition inspection with the landlord on February 18, 2017. The tenant testified that she returned the keys on that date. She testified that she kept the fob for the underground parking. The tenant testified that the landlord returned her \$600.00 security deposit paid by the tenant at the outset of this tenancy (November 1, 2016).

The tenant sought a monetary order in the amount of \$780.13. The tenant testified that the landlord issued a 2 Month Notice to End Tenancy and, based on this notice, the tenant indicated to the landlord that he would vacate the rental unit and end the tenancy on February 28, 2017. The tenant testified that she vacated the rental unit 10 days prior to the end of the tenancy but she had intended to return to the premises to collect his vehicle parked in the underground parking and do any final clean-up, clean-out of the rental unit. She testified that she believed she was entitled to access to the property until the date agreed upon by both parties: February 28, 2017. The tenant testified that the landlord advised her she would require the keys to allow cleaners into the rental unit.

The tenant testified that she did not have access to his rental unit from February 18 to February 28, 2017 and therefore seeks the return of the 10 days' rent that she paid but did not have access to his rental unit. She testified that, when a condition inspection was done on February 18, 2017, the landlord insisted on taking the keys to the rental unit. The tenant testified that she gave the keys willingly on the understanding she had paid rent until the end of the month and that, if she needed access to the rental unit, she could contact the landlord. She testified that the main reason to pay rent until the end of the month was to make arrangements for her broken down car to be towed to her new location. That is the reason that she retained the parking fob.

The tenant argued that, while she did not pay rent in February 2017, she is entitled to be compensated by the landlord. She argued that she would have had access to the rental unit for the entire month of February 2017 had she not returned the keys. She testified that, by virtue of the parties' agreement and the 2 Month Notice issued by the landlord, the landlord was required to compensate the tenant for 1 Months' rent. As the tenant did not have access to the rental unit for the entire month, she argues that she was therefore not compensated in accordance with the Act.

The tenant testified that, when she returned to the rental premises with a tow truck driver to tow her car to her new rental home, her car was not in the designated parking

spot where she had left it. The tenant testified that when she made inquiries, she discovered that the new owner of the rental premises had had the car towed.

The tenant testified that, prior to filing an application for dispute resolution, she made multiple attempts to contact the landlord and resolve this issue. She testified that she contacted the tenant by; telephone; by social media, by text correspondence and through the landlord's realtor. She testified that, after a brief conversation with the landlord by telephone, the landlord did not return her calls and messages even though the landlord had said he would "take care of it".

The tenant testified that she had been compensated by the landlord for her 1 months' rent pursuant to section 51 of the Act and in accordance with the landlord's 2 Month Notice to End Tenancy. She testified that she had hoped to keep the keys to the rental unit until the end of the month. She testified that the battery was dead on her car and that it took her time to arrange to have it towed away given some other personal circumstances.

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 order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

At this hearing, the tenant provided undisputed testimony that the landlord took the keys to the rental unit on February 18, 2017 but that the tenant was entitled to access to the rental until February 28, 2017 in accordance with the parties' agreement and the landlord's provision of a 2 Month Notice to End Tenancy. The tenant also provided documentary evidence to show that her car was towed from the rental premises' parking lot on February 25, 2017. She provided undisputed testimony that the new owner of the property had her car towed away.

The tenant submitted a copy of the tow invoice dated February 25, 2017. The tenant has shown that her car was towed to a tow lot on that date. The invoice indicates a tow charge of \$67.57 from the rental unit property to the tow yard and a second tow charge

of \$75.00 from the tow yard to the tenant's new residence. As well, the tow invoice indicates a charge of \$138.00 for storage of the car over 6 days. With the invoice, the tenant has shown that she has suffered a financial loss of \$352.13 – the total cost of the tow with administrative charges and taxes.

The tenant must also show that the financial loss she has incurred stems from a violation of the landlord in allowing the tenant's vehicle to be towed. The tenant has provided sufficient evidence in her undisputed testimony as well as her tow invoice that her car was towed from the rental unit premises. I accept the testimony of the tenant that the landlord had been advised that the tenant would return for her vehicle and that she was allowed to retain the fob for that purpose. Therefore, I find that the landlord's negligence in either advising the new owner or other error on the part of the landlord led to the towing of the tenant's vehicle.

Based on my findings, I find that the tenant is entitled to recover the cost of the tow and storage of her vehicle in the amount of \$352.13. I accept the tenant's evidence that but for the landlord's failure to ensure the safekeeping of her car in the underground parking, the tenant would not have incurred these expenses and would have only paid an amount to have her car taken for repairs in the timeline she anticipated.

With respect to the tenant's further application for \$428.00 for 10 days prorated at the end of this tenancy, I find that the tenant did not have access to the rental unit as the landlord had agreed and that the towing of the tenant's car on February 25, 2017 is evidence of that fact. However, I note that the tenant did not have out of pocket expenses for these 10 days as they were to be free – compensated by the landlord for the issuance of a 2 Month Notice. As the tenant testified that she had found another residence and that she had been compensated for 18 days of the month of February 2017, I find that she is not entitled to the entirety of the 10 days in compensation. However, I find that the tenant is entitled to a nominal monetary amount to reflect that the tenant did not act in satisfactory compliance with the Act at the end of the tenancy.

In all of the circumstances, I find that the tenant is entitled to an additional \$150.00 in recognition of the landlord's failure to continue her access to the rental unit in accordance with their agreement for move out on February 28, 2017.

I also find that the tenant is entitled to a \$100.00 monetary amount to recover the costs of the towing and \$100.00 for the cost of the filing fee.

Conclusion

I issue a monetary order to the tenant in the amount of \$602.13.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: October 2, 2017

Residential Tenancy Branch