



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking an order for the Landlord to comply with the Act, regulation or tenancy agreement, an order for the Landlord to provide services or facilities agreed upon but not provided, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, the agent for the Landlord (the “Agent”), and the Tenants, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

Preliminary Matter #1

The Tenants stated that contrary to the timelines provided in section 3.15 of the Rules of Procedure, they only received the Landlord’s evidence on May 28, 2018, and the Landlord acknowledged that he served his evidence on the Residential Tenancy Branch (the “Branch”) and the Tenants late. The Tenants stated that due to this late service, they did not have time to fully consider and respond to the Landlord’s documentary evidence and requested that it be excluded from consideration in this matter.

The ability to know the case against you and to provide evidence in your defense is fundamental to the dispute resolution process. As a result, I find that it would be fundamentally unfair and a breach of both the principles of natural justice and the Rules of Procedure to accept the Landlord's late documentary evidence for consideration in the hearing as it has not been exchanged in accordance with the *Act* or the Rules of Procedure.

As a result, the hearing proceeded based only on the documentary evidence provided by the Tenants and the oral testimony and evidence of the parties.

Preliminary Matter #2

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Are the Tenants entitled to an order for the Landlord to comply with the *Act*, regulation or tenancy agreement?

Are the Tenants entitled to an order for the Landlord to provide services or facilities agreed upon but not provided?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

Both parties agreed that a tenancy is in place, that a parking stall was rented to the Tenants at the start of the tenancy at an additional cost of \$30.00 per month, and that a Notice Terminating or Restricting a Service or Facility was served on the Tenants on or about January 23, 2018, advising them that effective March 1, 2015, their current parking stall would no longer be rented to them.

The Tenants testified that they require parking with the rental unit due to its location near a hospital and the lack of available on and off street parking in the area. As a result, the Tenants stated that parking is a material term of their tenancy agreement as

they only rented the unit as it came with parking. The Tenants stated that they require the parking stall in order to use the apartment as living accommodation as they need the vehicle to get to and from work. Further to this the Tenants stated that the Landlord is terminating their parking for issues unrelated to the parking of their vehicle, such as noise complaints, in order to force them out of the rental unit, which is unfair.

The Landlord denied that there is a verbal tenancy agreement in place and testified that a written tenancy agreement exists; however, a copy of the tenancy agreement was not before me for consideration. The Landlord acknowledged that a parking stall was rented to the Tenants at the start of the tenancy at an additional cost of \$30.00 per month, but he denied that the provision of a parking stall is a material term of the tenancy agreement. Although the Tenants testified that they were clear with the Landlord at the start of the tenancy that they would not rent the unit without parking, the Landlord stated that no such conversation occurred and that the parking stall was simply rented to the Tenants as a matter of course. The Landlord also provided testimony regarding the reasons for which the notice of termination was served, among which was the Tenants' refusal to provide him with documentation showing who owns the vehicle. Although the Tenants acknowledged that the vehicle is owned by one of their partners and provided testimony on why they are unwilling to provide the Landlord with proof of ownership, ultimately they acknowledged that proof of ownership has not been provide to the Landlord.

Analysis

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim.

While there was disagreement between the parties about whether a written or verbal tenancy agreement exists and the importance of the provision of a parking stall as part of the tenancy agreement, both parties agreed that parking was provided to the Tenants under the tenancy agreement at an additional cost of \$30.00 per month.

Section 14(1) and 14(2) of the *Act* state that a tenancy agreement may be amended to add, change, or remove a term, other than a standard term, only with the agreement of both the landlord and tenant. I do not find that parking is a standard term under the *Act* or the regulation and based on the documentary evidence and testimony before me for consideration, I find that there was no agreement between the parties for the Landlord to terminate the Tenants' access to a parking stall. However, section 14(3)(b) of the *Act*

states that the requirement for agreement does not apply to a withdrawal of, or restriction on, a service or facility in accordance with section 27 of the *Act*. Having made the above findings, I must now turn my mind to section 27 of the *Act*.

Section 27 of the *Act* states that a landlord must not terminate or restrict a service or facility if the service or facility is a material term of the tenancy agreement or is essential to the tenant's use of the rental unit as living accommodation. However, section 27 also states that a landlord may terminate or restrict a service or facilities, other than those described above, provided they give 30 days' written notice, in the approved form, and reduce the rent in an amount that is equivalent to the reduction in value of the tenancy agreement resulting from the termination or restriction.

Policy Guideline # 22 states that an essential service or facility is one which is necessary, indispensable, or fundamental and without which a reasonable person in similar circumstances would find it impossible or impractical to use the rental unit as living accommodation. However, it also states that in considering whether a service or facility is essential, the arbitrator will look at whether the tenant can obtain a reasonable substitute for that service or facility. Although the Tenants' argued that a parking stall is an essential service, I do not find that the lack of a parking stall, in and of itself, makes it impossible or impractical for the Tenants to use the rental unit as living accommodation. Further to this, the Tenants did not submit any documentary or other evidence to corroborate their testimony that they cannot reasonably obtain parking in the area from an alternative source. As a result, I find that the Tenants have failed to satisfy me, on a balance of probabilities, that parking in the building is an essential service for their use of the rental unit as living accommodation.

Policy Guideline #22 goes on to state that even if a service or facility is not essential to the Tenant's use of a rental unit as living accommodation, it may still be a material term if both parties agree that it is so important that the most trivial breach of the term gives the other party the right to end the agreement. While the Tenants argued that parking is a material term of their tenancy agreement, they did not submit any documentary evidence in support of this testimony and the Landlord disagreed that the provision of a parking stall is a material term. As a result, I find that the Tenants have failed to satisfy me, on a balance of probabilities, that the provision of a parking stall is a material term of their tenancy agreement.

Although the Tenants also argued that the reason for the termination of their parking is unfair, they did not provide any evidence or testimony to establish that the Landlord is required by the *Act* or the regulation to give particular reasons for terminating their

parking. As both parties agreed that the Landlord provided 30 days' written notice, in the approved form, to terminate the Tenants' rental of a parking stall, and reduced the rent by an amount that is equivalent to the amount being paid by the Tenants for the rental of the parking stall, I find that the Landlord complied with section 27 of the *Act*. As a result, I therefore find that the Landlord was entitled to terminate the Tenants' parking stall rental.

In consideration of the above findings, I therefore dismiss the Tenants' Application seeking an order for the landlord to comply with the *Act*, regulation or tenancy agreement and an order for the Landlord to provide services or facilities without leave to reapply. As the Tenants were not successful in their Application, I decline to grant them recovery of the filing fee.

Conclusion

The Tenants' Application is dismissed in its entirety without leave to reapply.

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: June 14, 2018

Residential Tenancy Branch