



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: MNDC

Introduction

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

- a. An order that the landlord allow access to the rental unit for the tenant and his guests
- b. An order that the landlord provides services or facilities required by the tenancy agreement or law
- 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.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on June 1, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order that the landlord allow access to the rental unit for the tenant and his guests?
- b. Whether the tenant is entitled to an order that the landlord provides services or facilities required by the tenancy agreement or law?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on October 1, 2009. The tenancy agreement provided that the tenant(s) would pay rent of \$770 plus \$25 for parking. The tenant paid a security deposit of \$390 on September 19, 2018.

In 2013 the tenant approached the landlord and asked if there were any unused parking stalls that he might rent. At the time there was a vacancy and the parties agreed the tenant could rent the stall for an additional \$50 per month.

RS testified he was present during that conversation and he made it clear to the tenant that he could rent the stall until it was necessary for a new tenant.

The tenant disputes the above evidence. He testified he dealt with M (the Manager at the time) and did not have a conversation with RS. M told him he was happy to rent the empty stall to him and it was never mentioned to him that it might be needed by the landlord some time down the road.

The landlord testified they need the second parking stall at this time as a new tenant has moved into the building. They have two cars and they need the parking stall for one of the cars. The landlord testified there are two other parties who have 2 stalls. One of the parties is a Chiropractor who has 2 stalls included in his contract. The second is a couple who each have a car.

The tenant testified there are 3 other tenants who have 2 parking stalls.

The tenant testified he needs the second parking stall for his taxi. He works a graveyard shift driving taxi. There is no parking within in a reasonable distance of the rental property. It is not possible for him to park his car on the street as it is a restricted zone.

Analysis

The definition of "services or facilities" includes parking and related services.

Section 27 of the Act provides as follows:

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.

The second parking stall was not part of the original tenancy agreement entered into in 2009. However, I determine that the provision of the second parking stall was an oral addition to the written tenancy agreement as the tenant began paying an additional \$50 per month for the second parking stall starting in 2013. I determined this is a material term of the tenancy agreement.

The landlord testified the second parking stall was provided to the tenant on the condition that the landlord could require the tenant to return it to the landlord if it was needed to another Tenant. The Tenant disputes this testifying that nothing was said to him that the second parking stall might have to be returned. The Tenant denies having a conversation with the representative of the landlord saying he talked only to the Manager.

After carefully considering all of the evidence I determined the landlord failed to prove the second parking stall was given to the Tenant on a conditional basis. It was open to the landlord to require the Tenant to sign a Parking Stall agreement that clearly set out the limitation and that the landlord could require that the Tenant relinquish it to the landlord. The landlord did not do this. The Manager who talked to the Tenant did not provide evidence at the hearing.

As a result I determined that the tenant is entitled to the second parking stall as a material term of the tenancy agreement. I ordered that the landlord desist from taking steps to give the 2nd parking stall to a new Tenant. As the tenant has been successful in this application I ordered that the landlord reimburse the tenant the cost of the filing fee in the sum of \$100 such sum may be deducted from future rent.

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: July 17, 2018

Residential Tenancy Branch