



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, PSF, RR, FFT

Introduction

On August 27, 2018, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking an Order that the Landlords provide services or facilities pursuant to Section 62 of the *Act*, seeking an Order to reduce the rent pursuant to Section 65 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with D.G. attending as her agent. The Landlords attended the hearing as well. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package, including her evidence, to the Landlords by registered mail on September 1, 2018 and the Landlords confirmed that they received this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlords were served the Notice of Hearing package and evidence.

The Landlords advised that they served their evidence to the Tenant by registered mail on October 1, 2018 and the Tenant confirmed that she received this package on October 3, 2018. As service of this evidence complies with Rule 3.15 of the Rules of Procedure, I have accepted and considered it when rendering this decision.

During the hearing I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the claim with respect to the loss of the parking spot

and that her hit and run insurance claim would be dismissed as I do not have jurisdiction to rule on the issue.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to compensation for the termination of a service or facility?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 1, 2018 and the tenancy ended when the Tenant vacated the premises on September 30, 2018. Rent was established at \$850.00 per month due on the first day of each month. A security deposit of \$400.00 was also paid.

The Tenant advised that as per the signed tenancy agreement, parking for one vehicle was included as a term of the tenancy. She advised that the Landlords served her with a Notice Terminating or Restricting a Service or Facility (the "Notice") on July 25, 2018 indicating that as of August 25, 2018, her parking spot would be terminated. The Notice indicated that the Landlords required more space in the driveway due to safety concerns for their children and that there was free parking on the street for the Tenant's use. The Notice also indicated that there would be no rent reduction for the termination of use of the parking space.

She emphasized the difficulty in finding available parking on the street for herself and friends who visited. As well, she advised how much more inconvenient and difficult it was to bring everyday items back and forth to her vehicle. In addition, she had a truck

for moving items and having to park on the street made this endeavour more difficult. The Tenant submitted that the photos of available parking that the Landlords referenced were taken in the morning when neighbours have likely already left for work. She cited the *Act* and advised that compensation is required for a restriction or termination of a provided facility. She advised that it was difficult to find a comparable parking situation to base her justification on the amount of compensation she is seeking; however, it is her belief that compensation in the amount of \$2.00 per day for the 37 days that this facility was terminated is fair.

The Landlords advised that the reason they terminated the parking spot is because they needed more space to accommodate moving their child in and out of their vehicle, and they felt it was unsafe to do this on the street. The Landlords did not believe terminating this parking spot would be an issue as there was available parking on the street. They submitted a week's worth of photos demonstrating that there was ample street parking available and they stated that the nearest available spot is only eight to twelve steps away from the original spot that was provided. The Landlords suggested that the *Act* did not require that the Tenant be compensated for this loss. In addition, they felt the Tenant should not be compensated any further as the Tenant had already received one month's free rent due to a Two Month Notice to End Tenancy for Landlord's Use of Property that they served in July 2018. In addition, the Landlords felt that the Tenant should not be compensated as there was free parking on the street.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 27(1) of the *Act* states that the Landlords may not terminate or restrict a service or facility that is essential to the Tenant's use of the rental unit or if providing this service or facility is a material term of the tenancy.

Section 27(2) of the *Act* states that the Landlords may terminate or restrict a service or facility that is not covered under subsection (1), with 30 days' written notice using the approved form **and** by reducing 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.

In reviewing the evidence before me, I do not find that parking would be considered an essential service or facility. Furthermore, Policy Guideline # 8 defines a material term as “a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.” In my view, I do not find that the provision of parking is so important that a breach of this would warrant an ending of the tenancy if not corrected. As such, I am satisfied that parking is not an essential service or a facility, nor would it be considered a material term of the tenancy.

However, I am satisfied that parking for one vehicle is a service of facility that has been included by the Landlords in the tenancy agreement and that this is not a term that falls under Section 27(1) of the *Act*. As such, I am satisfied that the Landlords can terminate parking by following the requirements of subsection (2).

The consistent and undisputed evidence before me is that the Landlords provided the approved Notice to advise the Tenant that parking for one vehicle would be terminated. Nevertheless, the Landlords have not complied fully with this subsection of the *Act* by compensating the Tenant in a value that is commensurate with the loss of this facility. Furthermore, I do not find the Landlords’ justification for not compensating the Tenant to be satisfactory, as compensation is a requirement of the *Act* if a Landlord wishes to terminate or restrict a facility. The Landlords’ reasoning that the Tenant was already compensated in the amount of one month’s free rent is tied to the notice that the Landlords chose to serve and is entirely unrelated to this issue.

Based on the totality of the evidence before me, I am satisfied that the Landlords did not fully comply with the *Act*, and as a consequence, the Tenant has established that she is entitled to a monetary award. I find that the Tenant’s request for \$2.00 per day for the 37 days that this facility was terminated to be entirely reasonable. As such, I grant the Tenant a monetary award in the amount of **\$74.00**.

As the Tenant was successful in her claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Item	Amount
Compensation for loss of facility	\$74.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$174.00

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$174.00** 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 22, 2018

Residential Tenancy Branch