



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes *FF, MNDC, OLC*

Introduction

This hearing dealt with an application by the tenant for the following orders:

- A monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
- An order that the landlord comply with the Act, regulation or tenancy agreement; and
- An order that the tenant recover the filing fee from the landlord for the cost of this application.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves.

As both parties were in attendance I confirmed service of documents. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. The landlord said that he had uploaded some evidence on the night before the hearing. The tenant stated that he had not received a copy of the evidence and therefore it was not used in the making of this decision.

I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

Did the landlord breach a term of the tenancy agreement? Is the tenant entitled to compensation?

Background and Evidence

This tenancy began on September 01, 2018 for a fixed term of one year pursuant to a tenancy agreement signed on August 27, 2018. The rent is \$1,150.00 per month due on the first of each month. The tenant paid a security deposit of \$575.00 at the start of the tenancy. The rental unit is located in the basement of the landlord's home. The landlord lives upstairs.

The tenant testified that he chose to rent this unit based on the availability of two parking spots which was very important to him. The tenant stated that this term was documented in the tenancy agreement but he did not receive a copy of the tenancy agreement till much later and after several requests.

The tenant testified that seven days into the tenancy, the landlord informed the tenant that he was allowed a single parking spot. A text message from the landlord confirms that he intended to change the number of parking spots as mentioned in the tenancy agreement, from 2 to 1.

After several requests, the landlord sent a copy of the tenancy agreement to the tenant and it indicated that just one parking spot was available to the tenant. The tenant confronted the landlord about changing the tenancy agreement without the tenant's consent and the landlord replied that the tenant had the option of moving out if he was not happy with the assigned single parking spot.

On September 16, 2018, the tenant filed this application for an order directing the landlord to comply with the tenancy agreement. On September 21, 2018, the tenant amended the application to include a monetary order for compensation. The tenant has applied to be compensated \$50.00 for each month that he was not allowed the agreed upon two parking spots.

The tenant testified that since he needed two parking spots and the landlord would not cooperate, he decided to move out effective November 01, 2018. The tenant is claiming moving costs and has filed a quotation in the amount of \$448.88. The tenant is also claiming the recovery of the filing fee.

During the hearing I attempted to get the parties to settle this dispute. The tenant offered to accept \$400.00 in full settlement of his claim. The landlord did not accept the tenant's offer.

Analysis

Section 7 of the Act provides:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

Based on the testimony of both parties and the documents filed into evidence, I find on a balance of probabilities that it is more likely than not that the tenancy agreement allowed for two parking spots. In a text message from the landlord, he confirms that he intended to change the number of parking spots from 2 to 1. The copy of the tenancy agreement given to the tenant 20 days after signing it shows that the tenant is allowed one parking spot.

Based on the communication between the parties by text message, I accept the testimony of the tenant. I find that he entered into a tenancy agreement that allowed him access to two parking spots but was denied the use of one. I further find on a balance of probabilities that it is more likely than not that the landlord altered the tenancy agreement without the tenant's consent.

Therefore I find that the landlord breached a term of the tenancy agreement which resulted in the tenant having to move out. I find that this inconvenience to the tenant warrants compensation.

In determining the amount of compensation, I take into consideration the seriousness of the situation. I find that the tenant is entitled to reimbursement for loss of use of a parking spot.

Section 27 of the *Residential Tenancy Act* addresses terminating or restricting services or facilities. Section 27(1) states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit.

Section 27(2) states that a landlord may terminate or restrict a service or facility other than the one referred to in section 27(1) if the landlord gives 30 day's written notice, in the approved form of the termination or restriction and 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.

In this case, I find that the tenant's right to two parking spots was terminated without notice and therefore I award the tenant his claim of \$100.00 as compensation for the loss of parking for two months.

The tenant testified that he chose to rent this unit based on the availability of two parking spots. I find that had the tenant been informed of availability of only one parking spot prior to entering into a one year lease, he may have chosen not to rent this unit. Based on the breach of a term of the tenancy agreement, I find that the tenant was forced to move out and therefore I find it appropriate to award the tenant moving costs. The tenant filed a quote of \$448.88 but agreed to accept \$200.00 towards the cost of moving. I find that the tenant is entitled to \$200.00. Since the tenant has proven his case, I award him the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim of \$400.00 which includes \$100.00 for parking, \$200.00 for moving costs and \$100.00 for the recovery of the filing fee. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for **\$400.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order of \$400.00.

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 30, 2018

Residential Tenancy Branch