



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALPINE COURT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act*, (the “*Act*”), for a monetary order for damage or compensation under the *Act* and to recover the filing fee paid for this application. The matter was set for a conference call.

The Tenant and a support person attended the conference call hearing, and each were affirmed to be truthful in their testimony. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified the Application for Dispute Resolution and Notice of Hearing had been served on the Landlord, by Canada Post Registered mail, sent on September 15, 2018, a Canada post tracking number was provided as evidence of service. I find that the Landlord had been duly served in accordance with sections 89 and 90 of the *Act*.

The Tenant was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to monetary compensation for damages under the *Act*?
- Is the Tenant entitled to the return for their filing fee for this application?

Background and Evidence

The Tenants testified that his tenancy began on October 1, 2013. Rent in the amount of \$1,050.00 was to be paid by the first day of each month and the Landlord had been given a \$525.00 security deposit at the outset of the tenancy. The Tenant submitted a copy of his tenancy agreement into documentary evidence.

The Tenant testified that in mid-March 2018, he contacted the building manager, via text message, to inquire into renting a parking spot. The Tenant testified that he received a response that parking was \$50.00 per month and that he would have to pay an additional one-time deposit of \$50.00 for the parking garage remote control. The Tenant submitted a copy of the text message into documentary evidence.

The Tenant testified that on April 27, 2018, he sent a text message to the property manager, stating that he had drop cheques for four months' worth of parking. The Tenant testified that he did not sign a parking agreement and that he was not assigned a parking spot, as you could just park anywhere in the garage. The Tenant submitted a copy of the text message into documentary evidence.

The Tenant testified that he began parking in the building parking garage as of May 7, 2018. The Tenant also testified that he did not drive the car often but that he would check on it at least once a week.

The Tenant testified that on May 31, 2018, he noticed that the car was gone. The Tenant testified that he contacted the building manager to inquire as to where the car was. The Tenant stated that he was informed that the person he was texting was no longer the building manager and that this person had left his position with that company a month ago. The Tenant submitted a copy of the text message into documentary evidence.

The Tenant testified that he located the car in a local tow yard and that it had cost him \$676.79 to get the car back. The Tenant provided a copy of an email between the Tenant's support person and the tow yard and the invoice he paid to get the car back into documentary evidence.

The Tenant testified that he attempted to contact the new building manager via text message and email to find out why the car was towed, what happened with their parking agreement, and to recover the costs of getting the car out of the tow yard. The Tenant testified that he never received a response. The Tenant submitted copies of 14 text messages and one email into documentary evidence.

The Tenant also submitted an audio recording from June 18, 2018, into documentary evidence.

The Tenant is requesting the recovery of the fee he paid to get the car out of the towing yard and the return of the rent he paid for the parking spot.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

After considering the oral testimony and having reviewed the evidentiary package of submitted by the Tenant, I find that insufficient evidence was presented by the Tenant to

prove that he and the Landlord had entered into a contract to rent a parking spot of the month May 2018. In the absence of sufficient evidence, I must dismiss the Tenant's claim for compensation.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in her application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this hearing.

Conclusion

I dismiss the Tenant's application 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: January 14, 2019

Residential Tenancy Branch