



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC MNDCT OLC FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) under section 47;
- A monetary order for compensation or damages pursuant to section 67;
- An order requiring the landlord to comply the *Act*, regulations, and/or tenancy agreement pursuant to section 62;
- Recovery of the filing fees of this application from the landlord pursuant to section 72.

The tenant DD appeared on behalf of both tenants (“the tenants”). Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The landlord acknowledged receipt of the tenants’ Notice of Hearing and Application for Dispute Resolution. The tenants acknowledged receipt of the landlord’s materials. Neither party raised issues of service. I find the tenants served the landlord in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) under section 47;
- A monetary order for compensation or damages pursuant to section 67;

- An order requiring the landlord to comply the *Act*, regulations, and/or tenancy agreement pursuant to section 62; and
- Recovery of the filing fees of this application from the landlord pursuant to section 72.

Background and Evidence

The parties agreed they entered into a month-to-month tenancy agreement which started November 1, 2018 and ended when the tenants vacated on March 16, 2019. Rent was \$1,600.00 a month payable at the first of the month. Each party submitted a copy of the tenancy agreement which included an addendum.

The addendum included clauses that “no lettered commercial vehicles can be parked on property except occasionally” and no outside storage was permitted. The landlord testified that he went over the terms of the lease with the tenants before the parties signed. He stated he explained to the tenants that he did not want vehicles marked with business signs at the unit. He also did not want the clutter and poor appearance of outside storage. The landlord testified the tenants appeared to understand the terms.

At the beginning of the tenancy, the tenants provided a security deposit in the amount of \$800.00. The tenants agreed the landlord may retain the security deposit for rent owing.

The tenants acknowledged that they had two vehicles that were used for business and displayed lettering and signage on them saying so; they also acknowledged that they stored a motorcycle covered by a tarp outside of the unit.

On January 4, 2019, the landlord gave a written notice to the tenants, a copy of which was submitted as evidence; the notice included warning to immediately stop parking commercial vehicles on the property and to stop outside storage.

The parties agreed the landlord issued a One Month Notice and served the Notice on the tenants on February 16, 2019 requiring the tenants to vacate by March 31, 2019. A copy of the One Month Notice was submitted as evidence. The One Month Notice stated that the tenants had breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Notice stated in part, “Parking of commercial vehicles is not permitted on an ongoing basis. Tenants have parked two commercial vehicles with company signage

every day and night.” The Notice also claimed the tenants was storing an unlicensed motorcycle at the unit in contravention of the agreement stating outdoor storage was not allowed. The tenants continued to park the same vehicles at the unit and continued outside storage of the motorcycle.

The tenants claimed that the landlord did not have grounds to issue the Notice.

The tenants disagreed with the landlord that they were in violation of the lease or that their vehicles were “commercial” vehicles within the meaning of the agreement. The tenants stated the vehicles were not licensed for commercial use.

In reply, the landlord testified that the vehicles should properly have been licensed for commercial use, that they were used for business, and were hence ‘commercial vehicles’ within the meaning of the agreement.

The tenants testified that the motorcycle was licensed and was not ‘unlicensed’ as claimed in the Notice. The tenants denied that keeping a licensed motorcycle under a tarp on the unit’s patio amounts to “storage outside” within the meaning of the agreement. The landlord replied it did not matter whether the motorcycle was licensed; it was stored outside and amounted to the kind of eyesore he warned the tenants to avoid.

The tenants claimed that because of the landlord’s unwarranted eviction, they were required to vacate and incurred expenses for which the landlord should provide compensation. The tenants gave testimony and submitted receipts in support of their claims that they rented a truck and paid movers \$200.00 on each occasion of moving in and moving out. The tenants claimed \$2,000.00 for reimbursement of these moving in and moving out expenses as well as \$100.00 for reimbursement of the filing fee for a total claim of \$2,100.00.

The landlord stated the tenants ignored the warning to stop the violations of the agreement, that he had grounds to issue the Notice, and that he does not owe the tenants any compensation.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision.

The parties agreed the tenants vacated the unit on March 16, 2019. Accordingly, as the tenancy between the parties has ended, the issues of cancellation of the Notice or the request for an order that the landlord comply with the *Act*, regulations or agreement, are no longer at issue. I therefore dismiss the tenants' claims for orders in this regard without leave to reapply.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenants failed to comply with certain terms and have not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Section 47 provides that upon receipt of a One Month Notice, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I find the landlord issued a One Month Notice under section 47 and served the tenants on February 16, 2019 as acknowledged by the tenants. The tenants filed a dispute notice within ten days.

Based on the evidence and testimony, I find on a balance of probabilities that the landlord had grounds to issue the Notice.

I believe the landlord's testimony that the issue of vehicles parked at the unit was discussed prior to the signing of the agreement. I find the tenants knew that the landlord did not want any vehicles at the unit with business or commercial signs on them and that they signed the agreement containing a term that parking of commercial vehicles at the unit was prohibited.

I find there is no significant difference between the term "business" and "commercial" in describing signage on vehicles within the context of this agreement and in this situation. The parties submitted photographs of the tenants' two vehicles; each vehicle carried a business sign. I find the vehicles are 'commercial vehicles' within the meaning of the agreement.

I find the tenants were in violation of the terms of the agreement in parking vehicles with business signs at the unit. I find the tenants deliberately ignored the term of the lease prohibiting this; they also ignored verbal warnings and a written warning.

I similarly find the tenants were aware that no outside storage was permitted at the unit. The parties agreed that the tenants' motorcycle was stored outside the unit. The tenants submitted a photograph of the motorcycle covered by a tarp and stated it was stored on the patio. I find it makes no difference whether the vehicle was licensed. I find it was stored outside at the unit in contravention of the agreement. I also find the tenants ignored the warnings of the landlord not to store the motorcycle outside.

In consideration of the evidence and the balance of probabilities, I therefore find the landlord has established that he had grounds to issue the One Month Notice to end the tenancy based on the prohibited parking of the tenants' vehicles marked with business signs and in their outside storage of the motorcycle.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** the following four points:

1. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
2. The existence of the damage or loss;
3. The actual monetary amount or value of the damage or loss; and
4. Everything reasonable was done to reduce or minimize (mitigate) the amount of the loss or damage as required under section 7(2) of the *Act*.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

In this case, the onus is on the tenants to prove they are entitled a claim for a monetary award.

In this case, for the reasons discussed above, I find the landlord had grounds under the *Act* to issue the One Month Notice.

Accordingly, I find the tenants' claim for damages fails to meet the first part of the test above, that is, that the landlord violated the *Act*, regulations or the tenancy agreement.

As the tenants have not met this requirement to establish a claim for damages, I therefore dismiss the tenants' claim without leave to reapply. The tenants are not entitled to reimbursement of the filing fee.

Conclusion

The tenants' claims are dismissed 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: April 08, 2019

Residential Tenancy Branch