Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Design Marque Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the cost of his filing fee.

The Tenant and an agent for the Landlord ("Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Tenant entitled to an order reducing his rent, and if so, by what amount?
- Is the Tenant entitled to recovery of the $100.00 filing fee?

Background and Evidence

The Parties agreed that a fixed term tenancy agreement started on April 16, 2018, running until April 30, 2019, after which time it would turn to a periodic tenancy agreement. The Parties agreed that the monthly rent is $1,285.00 plus $65.00 for utilities for a total of $1,350.00 due on the first day of each month; they also agreed that the Tenant paid the Landlord a security deposit of $642.50. The Agent said that the rental unit is a garden suite on the property of a large contemporary home. She said there is a pool in the backyard with a fence around the yard.

The Tenant said that he has mountain bikes worth approximately $6,000.00, so he wanted secure bike storage, in addition to the 400 feet square rental unit. The Tenant said the Agent agreed to this condition, but that he still does not have secure bike storage. The Tenant said he offered to build it, but that the owner wanted to build his own custom shed to fit in with the house, making it more appealing to buyers. The Tenant said he provided dimensions that would be required to store his bikes in the shed, but that the owner did not follow his directions. He said his bikes do not fit in the shed, and it does not have a door, so there is no way to lock them up.

The Agent said that the Landlord approved the Tenant's request to add bike storage, as long as he obtained the Landlord's approval first. The Agent said that the Tenant brought in some samples, which would have been too large, but that they talked about it. The Agent said that the Tenant could have added a shed or locking system at any time. However, she said the Tenant believed that it was part of the lease to have the Landlord pay for it, which she said was never the case.

The Parties agreed that this matter is not included in the tenancy agreement, although the move-in condition inspection report ["CIR"] says that a "bike security system to be reviewed to help tenant secure bike beside suite".

The Parties agreed that the Tenant is currently storing his bikes in the pool house, as it has four walls, a roof and a locking door. However, the residential property has been sold, and the new landlord has asked that the bikes be out of the pool house by the end of the month.

The Tenant said:

> [The Agent] talks about how the shed was built for me, but it was not to my standards. My bikes don't fit in there no matter how I hang them. Also there is no door, so I can't lock them in there. Someone could see them walking by. The components on bikes are worth hundreds of dollars. My seat is worth over $600. There are no locks on the gate. Bikes are stolen from locked sheds. Bikes were stolen across the road from a locked trailer. I made it clear to the property manager that I needed it.
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> The owner tried to build it, but he didn't follow my dimensions. There are no doors – anyone can see it walking by. [The Agent] talks about me building my own shed. I gave a document with the dimensions needed of 4 feet x 6 feet, but I was never approved to build that. She just said the owner decided to build his own shed. So I was not, actually able to build one, as she has suggested I should have been.

The Agent reasserted that this is not a term of the lease or tenancy agreement. In the CIR it says the bike storage system can be added as long as it is reviewed or approved by the Landlord.

In the Application, the Tenant said the Landlord owes him $471.00, which he said was based on the space needed for his bikes per square foot of rental unit cost. He seeks a retroactive rent reduction to June 26, 2018, which he said was over 10 weeks into the lease, thereby giving the Landlord plenty of time to build either the shed the Tenant had recommended or the custom shed he chose to build.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

A party who applies for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act.

Policy Guideline #1 is entitled "Landlord & Tenant – Responsibilities for Residential Premises" ("PG #1"). Under the heading *Fences and Fixtures*, PG #1 states: "The tenant must obtain the consent of the landlord prior to erecting fixtures." I find this is

consistent with the Parties' agreement that the Tenant was allowed to construct a bike storage system, as long as he first obtained the Landlord's permission.

The Parties agreed that bike storage was raised as an issue when the tenancy was under discussion; however, it was not included as a term of the tenancy agreement. The Tenant noted that it is referenced in the CIR, which I agree is an important document to the Parties; however, it is not the tenancy agreement or the contract on which the tenancy is based. The CIR is not a contract; rather it is a record of the condition of the property when the tenant takes possession and when possession is returned to the landlord. The tenancy agreement is the contract between the parties about the tenancy.

The parol evidence rule is a legal principle that prevents the introduction of evidence of prior or simultaneous negotiations and agreements that contradict, modify, or vary the contractual terms of a written contract. The parol evidence rule preserves the integrity of written documents or agreements by prohibiting parties from attempting to alter the meaning of the written document through evidence of the parties' discussions and communications that are not referenced in the contract or agreement.
However, Courts have ruled that the *surrounding circumstances* may be considered in interpreting the parol evidence rule. As such, while it is essential to read the terms of the tenancy agreement, an arbitrator may also consider compelling evidence of surrounding circumstances when interpreting the contract.

The undisputed evidence before me is that the Landlord agreed to allow the Tenant to establish bike storage, as long as it met with the Landlord's approval; however, I find that the Tenant did not propose anything with which the Landlord agreed, so the Tenant did not meet his side of this bargain in this regard.

Further, the agreed upon monthly rent does not include bike storage, as it was not part of the tenancy agreement. Accordingly, I find it inappropriate for the Tenant to claim a reduction in his rent, because an agreement separate from the tenancy agreement has not been fulfilled. Again, the separate bargain was not realized in part because the Tenant did not satisfy the Landlord of the appropriateness of the Tenant's proposal.

I find that the Parties have not deviated from their agreement about bike storage. Given this and my finding that it is not part of the tenancy agreement, I find that the Tenant has not met his burden of establishing that the Landlord has not complied with the Act, regulation or the tenancy agreement, causing the Tenant to suffer damage or a loss.

I, therefore, dismiss the Tenant's Application without leave to reapply. Since the Tenant

was unsuccessful, I do not award recovery of the filing fee.

Conclusion

The Tenant applied for a rent reduction, because the Landlord did not provide bike storage that met the Tenant's needs; this matter was not included in the tenancy agreement. Further, part of this separate, oral agreement was that the Tenant would gain the Landlord's approval for the bike storage proposal, which did not happen. The Tenant did not establish that the Landlord had breached the Act, regulation or tenancy agreement, so there was no basis for awarding the Tenant compensation or a rent reduction.

The Tenant's Application is dismissed without leave to reapply.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 13, 2019

Residential Tenancy Branch