



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M.A. CEDAR PLACE PROPERTIES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC DRI FFT LRE MNDCT OLC

Introduction

In this dispute, the tenant sought various relief under the *Residential Tenancy Act* (the “Act”). At the commencement of the hearing the tenant stated that he had vacated the rental unit and was only pursuing his monetary claims. He seeks compensation under section 67 of the Act for various matters, which will be addressed in further detail below.

The tenant applied for dispute resolution on April 18, 2019 and a dispute resolution hearing was held on June 6, 2019. The tenant, the landlord’s counsel (an articling student), and four additional agents or witnesses for the landlord attended the hearing. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. Neither party raised any issues with respect to the service of evidence.

I have reviewed evidence submitted that met the *Rules of Procedure*, under the Act, and to which I was referred, but have only considered evidence relevant to the issues of this application.

Issues

1. Whether the tenant is entitled to compensation for various matters as submitted in his application.
2. Whether the tenant is entitled to recovery of the filing fee.

Background and Evidence

The tenant submitted a Monetary Order Worksheet that I shall reproduce (in part) below, as it sets out the various claims, which total \$1,159.55, made by the tenant:

1. Extra Parking – Car towed from this spot	\$150.00
2. Towing – Vehicle in paid spot	\$120.00
3. Taxi – To retrieve car in impound	\$ 14.55
4. 2hrs – loss of Work Wages	\$100.00
5. Utilities – not part of agreed tenancy	\$355.00
6. Counter Cost (of Returned Cheques)	\$ 20.00
7. Counter the Cost (of “Late Rent” Fee)	\$300.00
8. Dispute Application [the filing fee]	\$100.00

The first four items listed have to do with the tenant’s car being towed by the landlord. The tenant testified that he added \$50.00 to his rent payment, for three months, in order to park in an extra parking spot. He explained that he thought “it was fine,” though he did not have any discussions with anyone about this parking arrangement. I note that there was no documentary evidence that the parking arrangement was part of the tenancy agreement.

Apparently, however, the landlord did not agree with this parking arrangement because the tenant’s car was towed. Both parties testified that the parking lot had warning signs up about not parking in certain spots, but the tenant argued that the signs went up after his car was towed. The landlord’s counsel submitted that the signs went up before the car was towed. (I note that landlord’s counsel’s submissions are not evidence of this, however.)

As a result of the towing, the tenant incurred the costs related to items 1 through 4, above. The loss of wages was related to the tenant having to try to locate the car.

In rebuttal, landlord’s counsel argued that there was no agreement or contract between the parties regarding the second parking spot. The tenant was, according to counsel, not entitled to the extra spot.

Regarding item 5, the tenant testified that while he was not responsible for utilities, the landlord demanded payment of utilities, so he paid the landlord \$355.00 for this item. In his Monetary Order Worksheet, the tenant notes that the utility payment was made as a

result of an “Eviction threat.” Included in evidence is a letter dated January 22, 2019, from the landlord to the tenant, in which the landlord writes: “You still owe us the BC Hydro payment in the amount of \$355.00 which we have paid from September 1 to October, 2018.”

In rebuttal, landlord’s counsel argued that electricity is not included in the rent and must be paid separately. A copy of the written tenancy agreement, which was submitted into evidence by the landlord, reflects that electricity is not included in the rent.

Regarding item 6, the tenant testified that he initially issued a cheque for a higher amount of rent that he later determined was incorrect. He then wrote a second cheque for the correct amount of rent. However, the landlord attempted to cash both cheques, and in the process incurred a \$20.00 returned cheque fee for the tenant.

The landlord did not make any submissions regarding the \$20.00 fee being claimed.

Regarding item 7, the tenant claimed that this is the amount that the landlord pursued him for, for late rent fees totalling \$300.00. In response, landlord’s counsel submitted that the landlord is not enforcing any additional late fees, and as such has not actually received or collected \$300.00 from the tenant.

Analysis

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. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that 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.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria to be awarded compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

Tenant's Claims Related to Towed Car

The applicant has failed to establish how the landlord failed to comply with the Act, the regulations, or the tenancy agreement, in respect of the landlord towing the tenant's car. While the tenant may have paid the landlord extra \$50.00 a month for a spot, he made no arrangement with the landlord for using the spot, and as such any "arrangement" that the tenant may have thought existed was simply not there. In other words, that the tenant chose to unilaterally use the parking spot was unrelated to the tenancy agreement between the parties.

I conclude that the landlord was under no obligation to provide the tenant with the extra parking spot, and the tenant had no right under the Act or his tenancy agreement to use this spot. As such, this aspect of the dispute, as it relates to the costs incurred as a result of the tenant parking in an unauthorized spot are unrelated to the tenancy.

As the matter concerning the parking is unrelated to the tenancy or the rental unit, I am, pursuant to section 2(1) of the Act without jurisdiction to make a decision in relation to this aspect of the tenant's claim.

Tenant's Claim for Utilities

Electricity (that is, BC Hydro) is not included in the rent and is not marked as such on the written tenancy agreement. Where a service or utilities is not included in the rent, then it would reasonably follow that the tenant is responsible for that service or utility. Electricity, while in the name of the landlord, is clearly the responsibility of the tenant in this case.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving that the landlord breached the Act or the tenancy

agreement by collecting \$355.00 for BC Hydro. As such, I dismiss this aspect of the tenant's claim without leave to reapply.

Tenant's Claim for Counter Cost (of Returned Cheques)

The tenant bore the cost of a returned cheque due to a mistake on his part in firstly issuing a cheque for the incorrect amount of rent. However, this mistake appeared, I find, to have occurred as a result of the landlord's increasing of the rent without proper notice.

As I explained to the parties during the hearing, after landlord's counsel confirmed that the notice of rent increase was served on the tenant by being slid under the tenant's door, that service by this method is ineffective.

Section 88(g) of the Act allows for service of documents (such as a notice of rent increase) by "attaching a copy to a door or other conspicuous place at the address at which the person resides". Sliding a document under a door is not attaching a document to a door or other conspicuous place. As such, the landlord failed to correctly serve the notice on the tenant, and any such rent increase that followed was of no force or effect.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving his claim for \$20.00 for the "Counter Cost (of Returned Cheques)" as described in his application.

But for the landlord's breach of section 88(g) of the Act in attempting to notify the tenant of a rent increase, the tenant would not have written a cheque in error.

Tenant's Claim for Late Rent Fees

As the tenant did not, in fact, pay the amount of \$300.00 to the landlord, there is no basis for me to consider whether the tenant is entitled to recover this amount. This aspect of the tenant's claim is rendered moot, and accordingly dismissed without leave to reapply.

Tenant's Claim for the Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute to another party. A successful party is generally entitled to recovery of the filing fee. As the applicant was partly successful I grant a partial reimbursement of the filing fee in the amount of \$50.00.

Landlord's Request for an Order of Possession

Landlord's counsel requested that an order of possession be granted to the landlord, given that the tenant has vacated the rental unit and did not pursue his application to dispute the One Month to End Tenancy for Cause. The tenant did not object to the order of possession being granted but mentioned that the landlord's employees are "already in there."

Accordingly, I grant the landlord an order of possession under section 55(3) of the Act.

Conclusion

I grant the tenant a monetary order in the amount of \$70.00, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia (Small Claims Court).

I grant the landlord an order of possession, which must be served on the tenant and which is effective two days after service.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: June 6, 2019

Residential Tenancy Branch