



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PINNACLE INTERNATIONAL REALTY GROUP II
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 28, 2019 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant appeared at the hearing. The Building Manager appeared for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties and all documentary evidence pointed to during the hearing. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed on the following. There is a written tenancy agreement between the Landlord and Tenant in relation to the rental unit. The tenancy was for a fixed term of one year and then became a month-to-month tenancy. Rent is \$1,235.00 per month due on the first day of each month.

The Tenant testified that the tenancy started February 2014 or 2015. The Landlord testified that the tenancy started January or February of 2015.

The Tenant sought \$950.00 as compensation for his bike which was damaged by the Building Manager. The Tenant had left his bike locked to a pipe in the parking lot of the building and the Building Manager sawed a piece of the bike off to remove it from that location.

The Tenant testified as follows. He saw his bike daily. The bike had been parked in the same location for four years. He did ride the bike; however, it was winter when the incident occurred, so he was not riding it at that time.

The Tenant further testified as follows. The Building Manager damaged the bike without any notice that it was going to be removed from the location. He did not see any notices from the Landlord about moving the bike. Nobody he talked to had seen any notices about the bike. He has submitted letters from two people who used to live in the building stating they never saw any notices about the bike. The Building Manager thought the bike belonged to tenants who had moved out, so he would not have posted notices. There would have been no incentive for him not to move the bike if there had been notices up about moving it. The notices submitted by the Landlord do not have markings showing they were posted two years ago. There is no digital date stamp on them.

The Tenant further testified as follows. The area to park bikes is a "gong show" and there is nowhere for him to park his bike. The Building Manager saw him park the bike at the location it was removed from.

The Tenant submitted that the Landlord's evidence is not reliable as it is from employees of the Building Manager and not date stamped.

The Tenant submitted a photo of the location where the bike was parked. The area is in a parking stall by pipes.

The Building Manager testified as follows. The bike was always parked in the same spot, it was never used. The bike was there before the Tenant lived in the building. The bike was padlocked to a pipe in his parking spot and was an obstacle. It was not in the area designated for bikes. He thought it was abandoned. He did not know the bike belonged to the Tenant. He posted notices at the entrance to the building, in the elevator and on the bike in 2016 and April 03, 2018. He removed the bike at the end of January of 2019.

The Landlord submitted a copy of the notice from April 03, 2018.

The Landlord submitted a signed letter from a maintenance person about the Building Manager posting notices in the building about the bike in April of 2018.

Analysis

Section 7(1) of the *Residential Tenancy Act* (the “*Act*”) states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order 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.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenant as applicant who has the onus to prove the claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The parties gave conflicting testimony about whether the Landlord posted notices at the entrance, in the elevator and on the bike about removal of the bike.

The Landlord submitted copies of the notice posted April 03, 2018. There is nothing about the notice that causes me to question the authenticity of the document. It is dated April 03, 2018. I do not find the absence of a digital date stamp relevant. The Landlord submitted a signed statement from the maintenance person in support of their position that notices were posted about the bike. There is nothing about this signed statement that causes me to question the reliability or credibility of the author. I do not find the author unreliable or not credible simply because he was an employee of the Landlord.

The Tenant testified that he did not see any notices posted about the bike. The only evidence he submitted in this regard are two letters. Both letters are typed documents. Neither letter is signed by the author. I place very little weight on the letters given they are not signed by the authors.

I do not find the Tenant's evidence sufficient to prove that the Landlord did not post notices about removing the bike as I place very little weight on the two letters submitted. I find the copy of the April 03, 2018 notice and signed statement of the maintenance person submitted by the Landlord more reliable. I find it more likely that the Landlord did post notices about removing the bike.

I am not satisfied the Tenant has proven that the Landlord breached the *Act, Residential Tenancy Regulation* or tenancy agreement for the following reasons. There is no issue about where the bike was parked as the parties agree on this. The photos show the bike was parked in a parking spot. There is no issue that the parking spot is not the Tenant's spot as the parties agree on this. The photos show the bike was parked by pipes. It is clear from the photos that the location used was not meant to be a parking spot for bikes. There is no issue that there was a parking spot for bikes as the parties agree on this. I do not find it relevant that the spot to park bikes was a "gong show" or full. I do not find that this entitled the Tenant to park his bike in someone's parking spot at a location that is clearly not meant for parking bikes. I have found it more likely than not that the Landlord did post notices about removing the bike.

In the circumstances, I am not satisfied the Landlord did anything to breach the *Act, Residential Tenancy Regulation* or tenancy agreement and therefore am not satisfied the Tenant is entitled to compensation.

Given the Tenant was not successful in this application, I decline to award him reimbursement for the filing fee.

The Application is dismissed without leave to re-apply.

Conclusion

I am not satisfied the Landlord breached the *Act, Residential Tenancy Regulation* or tenancy agreement and therefore am not satisfied the Tenant is entitled to compensation. Given the Tenant was not successful in this application, I decline to award him reimbursement for the filing fee. The Application is dismissed without leave to re-apply.

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 18, 2019

Residential Tenancy Branch