



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

CORRECTED DECISION

Dispute Codes O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a determination regarding their dispute of exclusive possession of a detached garage/shop by the landlord pursuant to section 62;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted late evidence package on August 1, 2019 in person. The tenant stated that he had no issues in proceeding with the hearing. Both parties confirmed the tenant served the landlord with his submitted documentary evidence on August 7, 2019 in person. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Preliminary Issue(s)

At the outset, the landlord's application was clarified with both parties. The landlord seeks a finding to be made on who has exclusive use and possession of the detached garage/shop located at the rental property; an order for the tenant to remove his personal items from the space and authorization to change the locks.

Issue(s) to be Decided

Is the landlord entitled to a finding on who has exclusive use of the detached garage/shop?

Is the landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 15, 2018 on a 3 year fixed term tenancy ending on February 15, 2021 as per the submitted copy of the signed tenancy agreement dated June 17, 2018. The monthly rent began as \$1,700.00 payable on the 1st day of each month. A security deposit of \$850.00 and a pet damage deposit of \$350.00 were paid.

The landlord seeks a finding to determine who has exclusive possession of the detached garage/shop, an order for the removal of the tenant's items from the space and authorization to change the locks. The landlord describes the space as a 30 X 30 detached shop/garage space. The landlord states that the tenant has taken over use and control of the space without his permission. The landlord states that the tenant has changed the door lock access without permission or providing the landlord with a key for access.

The landlord has argued that the garage/shop was not included in the tenancy agreement and was for the exclusive use of the landlord. The landlord stores a number of personal items in the garage/shop and uses it for storage purposes. The landlord stated that sometime during the tenancy, the tenant sought permission to temporarily store items in the garage/shop. The landlord permitted this. The landlord stated that the tenant has changed the locks to the garage/shop preventing the landlord from accessing it. The tenant has argued that the landlord still has access through the garage door.

The tenant argues that a shop/space clause was included as part of his tenancy agreement in section 3. The tenant refers to the signed tenancy agreement submitted by the landlord which lists at the bottom of page 2 of the signed tenancy agreement "~~Plus 30 X 30 Shop Included~~". The tenant also refers to a text message in which he asked the landlord for "can I have access to shop?" dated January 29, 2018. The tenant also stated in support of this claim the original posting for the rental unit had a picture of the outside of the garage.

The landlord argues that the tenant added this clause without the landlord's authorization and that the landlord did not initial this change, but confirmed that he gave access to the tenant to store some items temporarily. The landlord states in support of this a notation below that of the area referred "Tenant responsible for whole house Hydro & Fortis Gas" for which the landlord had the tenant initial. The tenant confirmed during the hearing that this was his initials.

The landlord has referred to an affidavit of another tenant of the rental building, M.K. It states in paragraph 4 that "when we entered into our agreement to commence our tenancy...he made it clear to me that the Shop garage building located at the back of the property was not included in the tenancy and it remained his shop to use for his own use only." The affidavit also states that he viewed the tenant park his boat in the shop and that the tenant had asked the landlord if he could park the boat inside the shop and was given permission. M.K. contacted the landlord notifying him of the tenant parking his boat inside the shop and that M.K. should also request permission to store a few boxes in the shop as well. M.K. stated that the landlord had given his permission. M.K. noted that approximately 7 months ago the tenant changed the locks to the shop without any notice to him or give him a chance to remove his stored boxes. M.K. has been able to subsequently remove his items.

The tenant has argued that he has an audio recording of M.K. recanting his statements in paragraphs 1-4 of the signed affidavit submitted in his submitted audio cd's # 1 and #2. The landlord argues that a review of these audio recordings show files that are not openable. The landlord also argues that M.K. was not aware of the recordings and did not give consent for the recording. The tenant confirmed that no consent was given by M.K. nor was he aware of the recordings. The landlord argues that M.K. was "pressured" into answering this way and that no weight should be given to them.

Analysis

The landlord has asked for an order of possession in relation to "30X30 garage/shop space" of the rental unit. My authority to make an order of possession is governed by subsection 55(2). That subsection provides that a landlord may request an order of possession of a rental unit. Thus, I cannot issue an order of possession for the "30X30 garage/shop space" as it is not the tenant's rental unit, that is, the tenant has no legal right to occupy this space under the tenancy agreement as a residence.

Pursuant to subsection 62(2) of the Act, I may make any finding of fact or law that is necessary or incidental to the making of decision or order under the Act. While I am

unable to issue an order of possession to the landlord in respect of the garage/shop, I am able to make a finding that the tenancy agreement does not permit the tenant to have exclusive possession of this space as it is a finding in law that is incidental to the making of this decision. Thus, I find that the tenant does not have a legal right under the tenancy agreement to have exclusive possession of the garage/shop. I make this decision based upon the landlord's evidence of the original signed tenancy agreement which the landlord has claimed that the tenant added a "~~Plus 30 X 30 Shop Included~~" without his permission or consent which forms why the tenant's addition was crossed out. I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant is this claim. The landlord referred to amendments with signed initials as shown on the submitted copy of the signed tenancy agreement as proof that amendments agreed to are noted and initialed. I find the tenant's assertion that this was crossed out by the landlord without his consent as likely since I believe that it was added by the tenant without consent by the landlord. I also refer to the landlord's evidence as shown in the listed affidavit of M.K. who provided evidence that the garage/shop was for the exclusive possession and use of the landlord for which he was informed at the start of his tenancy and also that he (M.K.) was informed by the named tenant to seek permission from the landlord to store his own items after the named tenant was given permission to temporarily store his possessions. In considering this, I found the tenant's claim that M.K. had "recanted" his affidavit evidence in a conversation recorded by the tenant without M.K.'s knowledge or permission to be highly suspect. As such, I find that this audio recording to be weighed with less reliability. I also find that the tenant has not provided any clear evidence of consent by the landlord that the garage/shop was under the exclusive tenant's possession.

The landlord's application is granted. I find that the landlord has exclusive possession of the garage/shop and that the tenant was only given temporary permission to store his items.

On the landlord's second request for the tenant to remove his items from the garage/shop, I find in the circumstances that the tenant must provide a key for access to the garage/shop or in the alternative the landlord may change the locks at the expense of the tenant. I also order the tenant to remove his personal property from this space by September 20, 2019.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord's application is granted.

The landlord is granted a monetary order for \$100.00.

This order must be served upon the tenant. Should the tenant fail to comply, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: ~~August 29, 2019~~ **October 9, 2019**

Residential Tenancy Branch