



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, OLC, MNDCT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for an Order requiring the Landlord to comply with the tenancy agreement and/or the *Residential Tenancy Act (Act)*, to cancel a Two Month Notice to End Tenancy for Landlord's Use, and to recover the fee for filing this Application for Dispute Resolution. At the outset of the hearing the Tenants withdrew the application to cancel a Two Month Notice to End Tenancy for Landlord's Use and the application for an Order requiring the Landlord to comply with the *Act* and/or tenancy agreement, as the unit has been vacated.

The male Tenant stated that the Dispute Resolution Package was delivered to the office of the Landlord's legal counsel, although he does not know the date of service. Legal Counsel for the Landlord stated that the Tenants' Dispute Resolution Package was served directly to the Landlord. Regardless of how it was served, I find that the Tenants' Dispute Resolution Package was received by the Landlord.

On February 10, 2021 the Tenants submitted an Amendment to the Application for Dispute Resolution. The male Tenant stated that the Amendment was delivered to the office of the Landlord's legal counsel, although he does not know the date of service. Legal Counsel for the Landlord stated that the Amendment was delivered to her office in early March of 2021.

The Tenants submitted evidence to the Residential Tenancy Branch in January and March of 2021. The male Tenant stated that some of the evidence was served to the Landlord with the original Application for Dispute Resolution, some was served with the Amendment to the Application for Dispute Resolution, and some was served in March of

2021. Legal counsel for the Landlord stated that she is satisfied that all of the Tenants' evidence was received by approximately March 17, 2021. As the Landlord acknowledged receiving the Tenants' evidence, it was accepted as evidence for these proceedings.

On March 16, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence was served to the Tenant, via registered mail and email, on March 16, 2021. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant, with the exception of legal counsel, affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Preliminary Matter

Legal Counsel for the Landlord stated that the Landlord has also filed an Application for Dispute Resolution, which is scheduled to be heard in June of 2021.

I determined that it would be unlikely that all of the issues in dispute at these proceedings plus any issues in dispute in the Landlord's could be considered in the one hour that is allotted for these hearing. I therefore declined to consider the Landlord's Application for Dispute Resolution during these proceedings.

The Landlord's Application for Dispute Resolution will be considered at the dispute resolution hearing scheduled for June of 2021.

Issue(s) to be Decided:

Are the Tenants entitled to compensation for cleaning the deck and making repairs?
Are the Tenants entitled to recover towing fees?
Are the Tenants entitled to compensation for legal fees?

Background and Evidence:

The Landlord and the Tenants agree that:

- The Landlord and both Tenants signed a fixed term tenancy agreement, the fixed term of which began on August 31, 2018 and ended on June 30, 2019;

- The tenancy agreement that was signed by both Tenants declares that the rental unit must be vacated at the end of the fixed term of the tenancy;
- The Tenants vacated the rental unit on June 30, 2019, as per the fixed term tenancy agreement;
- The Landlord and his wife moved into the rental unit for the summer of 2019;
- The Landlord and the female Tenants signed a second fixed term tenancy agreement, the fixed term of which began on August 31, 2019 and ended on June 30, 2021;
- The second tenancy agreement was simply a copy of the first agreement, with some items “whited out”, including the dates of the original fixed term;
- The tenancy agreement that was signed by the female Tenant declares that the rental unit must be vacated at the end of the fixed term of the tenancy;
- The Tenants did not vacate the rental unit until March 31, 2021.

The Tenants are claiming compensation of \$200.00 for cleaning the deck. The male Tenant stated that the deck need cleaning when they moved into the rental unit in 2018 and that it need cleaning when they moved into the unit again in 2019. The Landlord stated that on both occasions the deck was in reasonably clean condition when the Tenants moved into the unit.

The Tenants are claiming compensation of \$273.00 for towing fees. In support of the claim for towing fees the male Tenant stated that:

- On November 15, 2018 their vehicle was towed from the guest parking area of the residential complex;
- The vehicle was towed because it was not displaying a proper guest parking permit;
- The Landlord did not provide them with the proper guest parking pass;
- The Landlord told them that they could use guest parking if they simply left a note on their dashboard with their phone number on it;
- There was a note with his telephone number on the dashboard of his vehicle when it was towed;
- The Landlord did not tell them a proper parking permit was required;
- The Landlord did not tell them there was a parking permit was in the hutch;
- After his vehicle was towed the Landlord contacted the Strata to determine why the vehicle was towed;
- After his vehicle was towed the Landlord told him, by text message, that he was not aware a parking guest pass was required and that he would purchase one for the Tenants;
- After his vehicle was towed the Landlord purchased a parking permit for \$10.00 and someone slipped it under the door of the rental unit; and

- The Tenants did not submit evidence of any text messages relating to their conversation about parking.

In support of the claim for towing fees the female Tenant stated that:

- When the Landlord was asked for a guest parking permit, he told them they only needed to leave a note with their phone number on their dashboard; and
- There was not a parking permit in the hutch.

In response to the claim for towing fees the Landlord stated that:

- A proper guest parking permit is required when using the guest parking;
- A parking permit is always kept in the hutch inside the rental unit;
- He told the Tenants the parking permit was located in the hutch;
- He did not tell the Tenant they could park in guest parking if they left a note with their phone number on the dashboard;
- After the Tenants' vehicle was towed, he did not purchase a parking permit and arrange for someone to slip it under the door of the rental unit; and
- After the Tenants' vehicle was towed, he did not tell the Tenants that he was not aware a parking guest pass was required and that he would purchase one for the Tenants.

The Tenants are claiming compensation of \$150.00 to repair a shower head.

In regard to the claim for the shower head the Landlord and the Tenants agree that:

- In October or November of 2019, the Tenants informed the Landlord that the shower head needed replacing;
- The Landlord offered to have the shower head repaired;
- The Tenant offered to purchase and replace the shower head; and
- The Tenant recovered the cost of purchasing the showerhead by reducing a rent payment by.

The Tenants are claiming compensation of \$846.72 for legal fees.

Analysis:

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or

loss was the result of a breach of the tenancy agreement or Act; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss. As this is the Tenants' Application for Dispute Resolution, the Tenants bear the burden of proving their claim.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden.

I find that the Tenants submitted insufficient evidence to support their claim that the deck needed cleaning prior to them moving into the rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, to corroborate the Tenants' submission that cleaning was required or that refutes the Landlord's testimony that it was reasonably clean prior to the Tenants moving into the unit in 2018 and 2019. As the Tenants failed to establish that cleaning was needed, I dismiss their claim for cleaning the decks.

I find that the Tenants submitted insufficient evidence to support their claim that the Landlord told them that they could park in guest parking by leaving a note on their dashboard with their phone number. In reaching this conclusion I was heavily influenced by the absence of evidence, such as text messages, to corroborate the Tenants' submission that the Landlord provided this information or that refutes the Landlord's testimony that he did not provide that information to the Tenant. As there is insufficient evidence to establish that the Tenants' vehicle was towed as a result of incorrect information provided by the Landlord, I cannot conclude that the Tenants are entitled to compensation for being towed from the guest parking area.

I find that the Tenants submitted insufficient evidence to establish that the Landlord agreed to provide them with a guest parking pass as a term of the tenancy agreement. The tenancy agreement specifies that the Landlord agreed to provide two parking spaces with the tenancy. There is nothing in the tenancy agreement that establishes the Landlord also agreed to provide the Tenants with a guest parking pass. As there is nothing in the tenancy agreement that required the Landlord to provide the Tenants with a guest parking pass and the Tenants do not submit that the Landlord promised to provide them with a guest parking pass prior to being towed, I cannot conclude that the Tenants are entitled to compensation for any expenses related to not being provided

with a guest parking pass.

On the basis of the undisputed evidence, I find that the Landlord compensated the Tenants for the cost of purchasing a replacement shower head in the rental unit.

I find that the Landlord did not offer to compensate the Tenants for time spent purchasing and replacing the shower head. As the Landlord did not agree to compensate the Tenants for their time, I cannot conclude that the Landlord is obligated to pay the Tenants for purchasing and replacing the shower head. In the event the Tenants did not wish to purchase and replace the shower head, they could have simply refused to assist the Landlord with the repair, in which case the Landlord would have been required to either repair the shower head himself or hire a third party to complete the repair.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I note that *Black's Law Dictionary, sixth edition*, defines costs, in part, as:

A pecuniary allowance....Generally "costs" do not include attorney fees unless such fees are by a statute denominated costs or are by statute allowed to be recovered as costs in the case.

I dismiss the Tenants' claim for legal fees, as they are costs which are not recoverable under the *Act*.

I find that the Tenants have failed to establish the merits of their monetary claim. I find that the Tenants withdrew their claim to cancel a Two Month Notice to End Tenancy for Landlord's Use and their application for an Order requiring the Landlord to comply with the *Act* and/or tenancy agreement. As they withdrew a portion of their Application for Dispute Resolution and they did not establish the merit of the monetary claim, I dismiss their application to recover the fee for filing this Application.

Conclusion:

The Tenants have failed to establish the merits of their monetary claims and they are dismissed, without leave to reapply.

The Tenants withdrew their application to cancel a Two Month Notice to End Tenancy and their application for an Order requiring the Landlord to comply with the *Act* and/or tenancy agreement.

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 01, 2021

Residential Tenancy Branch