



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 12, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord comply with the Act; and
- a monetary order for damage or compensation.

The Tenant as well as the Landlord's agents I.D. and P.R. attended the hearing at the appointed date and time. At the start of the hearing, the parties acknowledged service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the Act.

Preliminary Matters

At the start of the hearing, there was some discussion surrounding the monetary amount being sought by the Tenant. The Tenant's Application was made on April 12, 2021 which included a monetary claim for \$19,500.00. The Landlord's Agents stated that they received a document from the Tenant which stated that the claim was amended to \$35,500.00. No such document was found in the Tenant's evidence provided to the RTB. During the hearing, the Tenant confirmed that his monetary claim was for \$19,500.00. The Landlord's Agents stated that they were prepared to proceed regardless.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord comply with the Act, pursuant to Section 62 of the *Act*?
2. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?

Background and Evidence

The parties agreed to the following; the tenancy began on April 1, 2014. Rent in the amount of \$375.00 is due to the Landlord by the first day of each month, as well as a security deposit in the amount of \$187.50 was paid to the Landlord. A tenancy agreement between the parties was submitted by the Tenant in support.

The Tenant stated that the Landlord had his vehicle towed on April 7, 2021. The Tenant stated that the Landlord is not permitted to seize the Tenant's personal property according to Section 26 of the Act. The Tenant stated that he has been without a vehicle since April 7, 2021 and that his vehicle is no longer accessible to him. As such, the Tenant is seeking compensation in the amount of \$19,500.00.

The Landlord's Agents stated that they provided the Tenant with several written warnings regarding the Tenant's requirement to register his vehicle with the City of Vancouver and to demonstrate that the vehicle is insured or has storage insurance, in order to park in the parking lot at the rental property. The Landlord provided a copy of the warning letters sent to the Tenant in support. The Landlord's Agents stated that the Tenant disregarded the written warnings and took no action, which resulted in the Landlord making arrangements to have the Tenant's vehicle towed from the parking lot on April 7, 2021.

The parties agreed that the Tenant was contacted by the Tow Company regarding his vehicle on April 30, 2021 offering the Tenant an opportunity to collect his vehicle and pay the cost of the towing, in lieu of having the vehicle sold for parts to recover the cost associated with towing the vehicle. The Tenant confirmed he received this notice and did not take any further action to collect his vehicle.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application 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 for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

The Tenant is claiming \$19,500.00 in relation to the loss of his vehicle after the Landlord made arrangements to have the vehicle towed for not having the vehicle registered with the City, nor providing proof of insurance to the Landlord.

I am satisfied that the Tenant was provided several opportunities to comply with the Landlord's request to register the vehicle and to have, at the very least, storage insurance on the vehicle, should the Tenant wish to have the vehicle remain in the parking lot at the rental property.

I find that the Tenant took no action, which resulted in his vehicle being towed from the parking lot. Furthermore, I find that the Tenant had an opportunity on April 30, 2021 to collect his vehicle before it was sold by the Tow Company in order to recover the cost of towing the vehicle. I find that the Tenant took no action, resulting in the loss of his vehicle.

In this case, I find that the Landlord has not breached the *Act*, as the Landlord provided ample written notice to the Tenant regarding the requirements to register and insure the vehicle. I find that the Tenant had to opportunity to mitigate his loss by complying with the Landlord's requests, however, failed to do so, which resulted in the vehicle being towed.

Furthermore, I find that the Tenant had an opportunity to further mitigate his loss by collecting his vehicle from the Two Company, but once again took no action to remedy the situation. As such, I find that the Tenant did not take any steps to mitigate is loss, and I therefore dismiss the Tenant's Application in its entirety without leave to reapply.

Conclusion

I dismiss the Tenant's Application for monetary compensation and for an order that the Landlord comply with the Act, without leave to reapply.

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 23, 2021

Residential Tenancy Branch