



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of \$580.00 for money owed or compensation under the Act, regulation or tenancy agreement and to recover the cost of the filing fee.

The landlord and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed that they received and had the opportunity to review the landlord's documentary evidence. The tenant also confirmed that they did not serve any evidence in response to the landlords' application.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB

Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- If yes, is the landlord also entitled to the recovery of the cost of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on April 15, 2016 and reverted to a month-to-month tenancy after April 30, 2017. Originally monthly rent was \$1,250.00 per month, which was due on the first day of each month. As of the date of the hearing, the parties confirmed that the monthly rent is \$1,380.00 per month. The tenant paid a security deposit of \$625.00 at the start of the tenancy, which the landlord continues to hold. The tenant continues to occupy the rental unit.

The landlord has applied for \$580.00 comprised of:

1. 8 months of parking fees at \$60.00 per month (March to October 2021), \$480.00
2. Filing fee, \$100.00

The tenancy agreement does not include parking in the monthly rent and reads as follows:

7. **WHAT IS INCLUDED IN THE RENT** - (Check only those that are included and provide additional information, if needed.) The landlord must not terminate, or restrict a service or facility that is essential to the resident's use of the rental unit as living accommodation, or that is material term of the Tenancy Agreement.

<input checked="" type="checkbox"/> Water	<input checked="" type="checkbox"/> Stove and Oven	<input checked="" type="checkbox"/> Window Coverings	<input type="checkbox"/> Storage
<input type="checkbox"/> Electricity	<input type="checkbox"/> Dishwasher	<input type="checkbox"/> Cablevision	<input checked="" type="checkbox"/> Garbage Collection
<input checked="" type="checkbox"/> Heat	<input checked="" type="checkbox"/> Refrigerator	<input type="checkbox"/> Laundry (free)	<input type="checkbox"/> Parking for vehicle(s)
<input type="checkbox"/> Furniture	<input type="checkbox"/> Carpets	<input type="checkbox"/> Sheets and Towels	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Additional Information: _____			

The landlord is seeking \$60.00 per month for the period including March, April, May, June, July, August, September and October of 2021 as the tenant was parking at the rental building and the landlord suggested they agree on \$60.00 per month parking.

As there is no signed parking agreement between the parties in writing and given that the parties were not able to reach a mutual agreement during the hearing, I will address parking further below.

The tenant asked the landlord if they would be towed if they continue to park at the rental building without a signed parking agreement. The landlord confirmed that the tenant will be towed without a signed parking agreement going forward.

Analysis

Based on the documentary evidence, the oral testimony of the parties, and on the balance of probabilities, I find the following.

Test for damages or loss

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 in sections 7 and 67 of the *Act*. Accordingly, 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 instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

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.

As parking is not included in the monthly rent, and the parties have not entered into a signed parking agreement, I find the landlord has failed to meet the burden of proof for their claim. As a result, I dismiss this application without leave to reapply, due to insufficient evidence.

As the landlord's application has failed, I do not grant the filing fee.

As this tenancy continues, should the tenant and the landlord enter into a signed parking agreement, both parties have the right to apply for dispute resolution regarding that signed parking agreement in the future.

Conclusion

The landlord's claim is dismissed due to insufficient evidence, without leave to reapply.

I do not grant the filing fee as noted above.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 25, 2021

Residential Tenancy Branch