



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlord SA attended for both landlords ("the landlord"). The tenant attended. No issues of service were raised. I find each party served the other in compliance with the *Act*.

Both parties were provided the opportunity to make relevant affirmed submissions in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout the entire hearing, I warned the tenant several times to lower the volume of his voice and to cease interrupting me.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order and reimbursement of the filing fee?

Background and Evidence

This is an application by a tenant for compensation for lost parking and reimbursement of one month's rent. The tenant claimed the following in addition to reimbursement of the filing fee:

ITEM	AMOUNT
Loss of parking stall (1/2 March, April, May, June and July 2021) 4 months x \$150.00)	\$600.00
Reimbursement rent July 2021	\$1,750.00
TOTAL CLAIM BY TENANT	\$2,350.00

The parties submitted a copy of the tenancy agreement. They agreed on the background of the tenancy as follows:

INFORMATION	DETAILS
Type of Tenancy	Fixed term
Beginning Date	February 1, 2021
Fixed Term End Date	July 31, 2021
Monthly Rent	\$1,790.00

Vacancy Date	July 2 or 3, 2021
Security deposit	\$875.00 (returned)
Arrears of Rent	0

The tenancy agreement included the provision to the tenant of one parking spot in the parking area of the building. The parties agreed that tenants were required to stop using the parking area because of a sprinkler problem.

The parties disagreed on when the tenant had to stop using the parking stall. The tenant testified that he was required to move their vehicle mid-March 2021. The landlord testified the strata sent a letter dated April 13, 2021, a copy of which was submitted as evidence, requiring the cars be moved then. This was the only documentary evidence submitted with respect to the date the tenant moved the vehicle.

The tenant testified that the loss of a parking space was very inconvenient for him and his family. As a result, he provided notice by text to the landlord on June 13, 2021, a copy of which was submitted, that they were moving out. He requested the landlord's help in finding a replacement tenant for the month of July 2021.

The parties had different versions of events concerning the tenant's parking. The landlord testified he offered to pay parking for the tenant in a nearby building which the landlord estimated would cost \$40.00 monthly. The landlord also stated there was adequate parking outside at the building and he submitted pictures of such available parking.

The tenant said there was no convenient alternative parking and they had to park their car many blocks away. The tenant also denied that the landlord suggested the landlord would provide interior parking in a nearby building at the landlord's cost. The tenant submitted no evidence supporting his claim of inconvenience or financial cost of alternative parking.

The landlord testified he attempted to find a replacement tenant for the month of July 2021 to help the tenant. He sent a text to the tenant, a copy of which was submitted, confirming he would post the ad on a website. A copy of the posting was submitted. The landlord asked the tenant to let him know if the unit would be empty and available for

viewing the end of June. No reply was submitted as evidence.

However, the landlord was unsuccessful in finding a new tenant for July 1, 2021, and the unit was re-rented on July 10, 2021, starting August 1, 2021. The landlord sent a text to the tenant confirming this. A copy of the text and new tenancy agreement were submitted.

The landlord testified that the tenant moved out at the end of Jun 2021 leaving the unit clean and empty. The tenant stated they moved out July 2 or 3, 2021. The tenant acknowledged their obligation under the Act to pay rent for the month of July 2021.

On July 25, 2021, landlord sent a text to the tenant, a copy of which was submitted, asking for the keys back. The landlord stated, "You have moved out of the apartment by the end of Jun and no longer live in the apartment. Please return the keys and received your damage deposit. I would like to give the keys to new tenant so that they move in with no rush." The landlord offered to pick up the keys that day.

The tenant said they moved out July 3, 2021. The tenant stated he did not return the keys. The tenant said he went to the unit on July 27, 2021, opened the door with his keys, and discovered that the new tenants had moved in.

The landlord confirmed that they allowed the new tenants to move in early as they had a new baby. The landlord said they had extended the same courtesy to the tenant who was allowed to move in two weeks early at the beginning of their tenancy without paying additional rent. However, the tenant stated he had no recollection of the event.

The landlord testified he did not receive any additional rent from the new occupants who started paying rent August 1, 2021. He testified the tenant had moved out and he did not expect the tenant to go to the unit for any reason.

The tenant expressed disbelief at the landlord's statement that he received no money from the new occupants and requested reimbursement of rent for the month of July 2021 as they had paid for the unit and the landlord had no right to let anyone else live there.

The landlord returned the security deposit to the tenant at the end of the tenancy. No condition inspection report on moving in or moving out was submitted as evidence.

The tenant claimed compensation for loss of parking for four months and reimbursement of rent for the month of July 2021.

Analysis

Only relevant, admissible evidence is considered. Only key facts and findings are referenced.

Standard of Proof

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

It is up to the tenant to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find the landlord's submissions to be persuasive, calm, and forthright. Where the parties' version of events differ, I prefer the landlord's version.

Four-part Test

When an applicant, the tenant in this case, seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the landlord failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the tenant proven the amount or value of their damage or loss?
4. Has the tenant done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

...

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I accept the tenant's testimony that they were inconvenienced by losing an interior parking stall which the landlord was required to provide under the tenancy agreement.

However, the tenant has submitted no estimate of the cost of comparable replacement parking or any evidence of loss. As well, I accept the landlord's testimony as supported by photographs, that there was adequate alternative parking close to the unit. I also accept the landlord's testimony that they offered to pay for interior parking elsewhere.

I therefore find the tenant has not met the burden of proof with respect to this aspect of the claim which is dismissed without leave to reapply.

I now consider the tenant's claim for compensation for rent for the month of July 2021.

I accept the landlord's testimony, supported by documentary evidence, that the landlord attempted to find a replacement tenant for July 1, 2021. I also accept his testimony that he went to the unit, saw it was empty and clean, and reasonably believed the tenant had vacated the unit at the end of June 2021 and would not be returning. I also find that the landlord allowed the new tenants to move in a few days early (by July 26 or 27, 2021) without financial reward. Although the tenant had no recollection of a similar courtesy having been extended to him, I accept the landlord's testimony in this regard

as the most likely version of events.

The tenant was entitled to occupy the unit for the month of July 2021. While the landlord did not obtain the tenant's permission as required to let new occupants move in, I find the tenant has not met the burden of proof that they have incurred any loss. I also find the tenant lived elsewhere for the month of July 2021. I find the landlord did not benefit financially.

I find the tenant did not incur any compensable loss or inconvenience.

I therefore find the tenant has not met the burden of proof with respect to this aspect of the claim which is dismissed without leave to reapply.

As the tenant has not been successful in any aspect of the claim, I do not award the tenant reimbursement of the filing fee.

Conclusion

The tenant's claim is dismissed 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: February 11, 2022

Residential Tenancy Branch