Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, RR, PSF, OLC, MNDCT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to dispute a rent increase; a rent reduction and an order to have the landlord provide services and facilities. The tenant later submitted a "Tenant Request to Amend a Dispute Resolution Application" seeking to include a monetary claim.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Neither party identified any issues with the service of documents.

In support of her amendment and at the outset of the hearing the tenant clarified that the tenancy has ended, and she no longer occupies the rental unit. As such, I find the issues of a rent increase; a rent reduction; and requiring the landlord to provide services and facilities is now moot. As such, I amend the tenant's Application to exclude these matters. This leaves the tenant's monetary claim.

The landlord submits the tenant's amendment to include the monetary claim is not sufficiently related to the issues identified in the tenant's original application and as such, pursuant to Residential Tenancy Branch Rule of Procedure 2.3. Specifically, the landlord submits that the issues of vehicle vandalism, costs of service and doctor's note are all outside of the scope of her original Application.

In regard to the tenant's claims for compensation for the costs of serving documents for the purpose of this hearing and for her doctor's note to be submitted as evidence for this proceeding, I note that the *Residential Tenancy Act (Act)* does not allow for the recovery of costs associated with pursuing a claim against another party, with the exception of the filing fee charged for the submission of an Application for Dispute Resolution. As the tenant had not originally, nor in her amendment, sought to recover the filing fee and other fees are not allowed, I do not allow the tenant's amendments seeking to recover those costs.

However, in relation to the issue of compensation for vehicle vandalism, I find that it is sufficiently related to the issue of parking on the residential property, which was the basis for the majority of the tenant's original Application. As such, I find these matters are sufficiently related to the tenant's original Application and I allow the amendment. I also find that tenant's amendment seeking monetary compensation instead of a rent reduction or disputing a rent increase are also based on the same issues and those amendments are also allowed.

The landlord submitted that there is no authourity under the *Act* for the tenant to pursue a claim of harassment, intimidation, or vandalism through the Residential Tenancy Branch.

The landlord relies on *Janus v. The Central Park Citizen Society, 2019 BCCA 173 (Janus)*, which held that the disputes adjudicated by the RTB are limited to issues arising out of the tenancy agreement, the *Act* and regulation.

The landlord also submits that the *Act* clearly confines the adjudication of disputes to those that involve tenancy agreements, rental units, and other residential property. Claims of harassment or vandalism of personal property are outside of the *Act*'s authourity.

I am not persuaded by the landlord's argument. While I do agree that many issues brought forward to the RTB sometimes fall outside of our jurisdiction, In the case before me, the tenant is making claims that are based on the tenancy relationship between her and the landlord.

Specifically, the tenant's claims in regard to the damage to her vehicle are based on her claim that she had a right under the tenancy agreement to be parking on the residential property. If the tenant did have that right and the landlord prevented her from accessing off street parking, then the loss suffered by the tenant for vandalism to her car might be attributed to the landlord's non-compliance with the tenancy agreement and/or the *Act.*

Likewise, in regard to the tenant's claim for harassment, she is making the claim that the landlord breached her right to quiet enjoyment. This right is guaranteed under Section 28 of the *Act* and Clause 14 of the tenancy agreement submitted into evidence.

For the above reasons, I find that I do have jurisdiction to hear the tenant's claims for these amounts sought for damage caused to her personal property as a result of the landlord's actions and for a loss of quiet enjoyment.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for loss of a service or facility; for car detailing, and a loss of quiet enjoyment, pursuant to Sections 27, 28, 67, and 72 of the *Act.*

Background and Evidence

For clarity, the tenant seeks the following compensation:

Description	Amount
Restriction from off-road parking $100.00 per month for 4 months and 7 days	$425.00
Car detailing	$250.00
Loss of Quiet Enjoyment – ½ month	$500.00
Total	$1,175.00

The landlord submitted into evidence a complete copy of a "Commercial Lease Lease Summary", signed by the parties on August 2, 2020. The landlord submitted that he primarily deals with commercial leases and used his standard agreement as a residential tenancy agreement.

The agreement stipulates that the tenancy began August 15, 2020 and would last for a fixed term until August 31, 2021 with a monthly rent of $1,000.00 due on the 1st of each month with a security deposit of $1,000.00 paid. The tenancy ended on January 8, 2022.

In regard to parking the tenancy agreement has the following clauses that mention parking on the property:

- Clause 1(a)(f) - "Common Areas and Facilities" shall mean all of the Land and the Building including, without limitation, the Roof, exterior and interior walls and structural elements including bearing walls, electrical, plumbing, drainage, mechanical, and other installations or services as well as the structures housing the same, fire prevention and communication systems, loading areas, parking areas, driveways, landscaped areas, retaining walls, washrooms (other than washrooms within the Premises or within other premises leased to Tenants), any railway spur lines servicing the Building, and all fixtures, general signs, lighting facilities, improvements, equipment, and installations thereupon or therein which the Landlord provides or designates from time to time for the general use by or for the benefit of the Tenants in common with other Tenants and other persons

permitted by the Landlord; provided however that the Common Areas and Facilities shall exclude all of the Rentable Area, whether or not leased to Tenants, and it shall further exclude all areas of the Land in respect of which the Landlord has granted to the Tenants or any other Tenants an exclusive easement or an easement in common only with the Landlord";

- Clause 7.2 (a) – "The use and occupation of the Premises by the Tenants shall include the nonexclusive licence to use, in common with others entitled thereto, the Common Areas and Facilities, subject to this Lease and to the exclusive control, management, and direction of the Landlord. The Landlord hereby grants to the Tenants: (a) 0) N/A (ii) a non-exclusive licence, during the subsisting Term and any renewal thereof, in common with all others entitled thereto, to pass and repass with or without vehicles over those areas of the Land as the Landlord may from time to time designate in writing, and to use, for the parking of motor vehicles, those parking spaces on the Land as the Landlord may from time to time designate in writing for the use of the Tenants";
- Schedule C – "DESIGNATED PARKING On the street"

The tenant submitted that when she originally the rental unit was advertised as having off-street parking. In support of this the tenant provided a copy of an undated Craigslist ad for the rental unit that does identify that off-street parking is included.

The tenant also submitted that when it came to sign the tenancy agreement the landlord "changed" the parking term to read that parking was on the street. She explained the landlord stated that it was only so that in the event that he needed to ask the tenant to park on the street from time to time there would be no issues.

The tenant also submits that she parked on the property for over a year and was only asked to move her vehicle off the property five times during that period. She stated that it was only once the tenancy converted to a month-to-month tenancy that the landlord started making parking on site an issue.

She stated she started parking on the street but then, on October 1, 2021 she started parking on the residential property again and the landlord started to become aggressive in his dealings with her and passive aggressive by his actions, such as blocking her vehicle in with other vehicles.

The landlord acknowledges that from time to time during the tenancy they agreed to allow the tenant to park on the residential property on an ad hoc basis but that these intermittent temporary approvals did not change the terms of the agreement.

The tenant seeks compensation for the landlord's termination of off-street parking for a period of 4 months and 7 days. The tenant has determined a value of $100.00 as the decrease in value of the tenancy agreement.

The tenant also seeks compensation in the amount of $250.00 for the costs of cleaning and detailing of her vehicle because damages she incurred when she was forced to park on the street after the landlord prevented her from doing so. The tenant did suggest, although she confirmed that she did not have evidence to support her suggestion, that the landlord may have caused the damage himself.

The tenant also seeks compensation in the amount of $500.00 or the equivalent of ½ month's rent for harassment and the loss of quiet enjoyment during the tenancy but primarily since the fall of 2021.

The tenant submits that at the start of the tenancy the landlord made inappropriate remarks and check ins with her and that in February 2021 he offered to take her on a ski trip which she felt was inappropriate. The tenant submits that these interactions made her feel very uncomfortable.

In addition, the tenant submits that in the fall of 2021 when the issues with the parking began the landlord began harassing her by text message and communications and that he would park vehicles in a manner that would block her car in and she could not leave. Specifically, the tenant wrote in her written submission:

> "Unlawfully communicating false bylaws to control where I park on the street, unlawfully communicating that my car will be towed if I were to park in the driveway which is a service included in my rent, installing signage to unlawfully remove my car from its legal parking spot, using your vehicles on multiple occasions to blockade my car preventing me from leaving the property, unlawfully communicating that you will blockade my car again and not move, unlawfully communicating that you will steal and throw out my property unless I pay you, vandalizing my car by throwing eggs on it while on your property, multiple attempts at illegal eviction, harassing and intimidating behavior, causing undue stress and loss of sleep, causing harm to my health, waking me up repeatedly when you are aware of my work schedule, directly putting my life in danger as I must operate a vehicle after such disturbances, unwanted courtship and sexual attention."

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**

4. Steps taken, if any, to mitigate the damage or loss.

Section 27(1) of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement.

Section 27(2) states that a landlord may terminate or restrict a service or facility, other than one referred to in subsection 1, if the landlord gives 30 days written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of that service or facility.

Based on the submissions of both parties, I find the tenant has failed to establish that parking was included in the rent and as such, she should have had no expectation of being able to park on the residential property. Regardless of what may have been advertised a party who signs a tenancy agreement is signing the agreement with terms as they are laid out in the document and both parties are bound by those terms.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In the case before me, I find the documentary evidence submitted clearly shows that parking was not an included term of the tenancy. In addition, the agreement itself does allow for the landlord to make an exception to the issue of using common space for parking but it stipulates that the exception must be made in writing. The tenant has provided no evidence confirming the landlord had made an exception.

Furthermore, the landlord disputes the tenant's assertion that she parked on the property for a full year with only a few times being asked to park on the street and the tenant has provided no additional evidence to support this portion of her claim.

As such, I find the tenant did not have a right under the tenancy agreement to park on the property and as such, the landlord was not in violation of Section 27 when he began to insist the tenant not park on the residential property.

As a result, I dismiss the tenant's claim for compensation, in the amount of $425.00, for the restriction or termination of a service or facility pursuant to Section 27 of the *Act*.

Furthermore, as I have determined the landlord did not have a right under the tenancy agreement to be parking on the residential property, I find the landlord cannot be held

responsible for any damage caused to the tenant's vehicle while she was parked on the street.

Section 28 of the *Act* stipulates that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

> (a) reasonable privacy;
> (b) freedom from unreasonable disturbance;
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted]; and
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In regard to the tenant's claim for the loss of quiet enjoyment, I find that the tenant's submissions (6 out of her 11 assertions) relate primarily to the issue of the parking on the street, which I have determined the tenant did not have a right to do. In regard to the alleged actions taken by the landlord in these circumstances, I am not convinced, from the tenant's submissions, that she has provided sufficient evidence that any of the actions were harassing in nature or disruptive to the tenant's quiet enjoyment.

In addition, while the landlord's notice to end tenancy did not comply with the requirements set forth under the *Act*, specifically that it was in the form of a letter and not the prescribed format, I find a landlord has a right to attempt to end a tenancy he feels the tenant has breached material terms of a tenancy and/or has cause allowed for under the *Act* to end a tenancy.

On the issue of "unwanted courtship and sexual attention" I do concur with the landlord's counsel, in these circumstances, the tenant has provided insufficient evidence that these events are sufficiently related to the tenancy agreement or *Act* for me to consider a claim for compensation. As such, I decline to accept jurisdiction for that portion of the tenant's claim for loss of quiet enjoyment.

Overall, on the issue of loss of quiet enjoyment, I dismiss the tenant's claim for compensation in the amount of $500.00.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution, in its entirety 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: March 19, 2022

Residential Tenancy Branch