



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WIEBE PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code PSF, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution made on August 30, 2022. The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order that the Landlord provide services and facilities required by the tenancy agreement or law; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on his own behalf. The Landlord was represented at the hearing by EC and DD, agents. All in attendance provided a solemn affirmation at the beginning of the tenancy.

The Tenant testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by leaving a copy in the Landlord's mail slot. EC confirmed it was picked up at his rental unit September 14, 2022. No issues were raised with respect to service or receipt of these documents during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The Landlord did not submit documentary evidence in response to the Tenant's application.

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 Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

1. Is the Tenant entitled to an order requiring the Landlord to provide services and facilities required by the tenancy agreement or law?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on August 1, 2017. The parties agreed that rent is currently \$1,329.00 per month, having been reduced from \$1,339.00 per month. The reason for the reduction is explained further below. The Tenant paid a security deposit of \$650.00, which the Landlord holds.

The Tenant requested an order that the Landlord provide services and facilities required by the tenancy agreement or law. Specifically, the Tenant requested an order that he be permitted to use a parking space to locate his cargo trailer. The Tenant testified that on or about August 15, 2022, he was advised that he had to remove his 14' x 7' cargo trailer from his parking space. The Tenant testified that he was initially informed that he had to move it by August 21, 2022, but that the date was subsequently changed to August 19, 2022. The Tenant testified he was told he had to remove the cargo trailer because the parking lot was being paved and for health and safety reasons.

The Tenant testified that DD gave him verbal permission to place the cargo trailer in a parking space when he moved into the rental unit. Although the Tenant has removed the cargo trailer from the rental property, he would like to return it to avoid storage charges. The Tenant suggested it is not fair that he be required to remove it and submitted that the Landlord should not be able to choose which rules to enforce. The Tenant also suggested that the cargo trailer should be "grandfathered."

In reply, EC agreed generally with the Tenant's version of events. EC also acknowledged that the Tenant has not been asked to remove the trailer in writing, but that the policy for all of the Landlord's properties is that parking spaces cannot be used for storage containers. EC testified that DD was unaware of the Landlord's policy when she approved the cargo trailer.

EC also testified that the tenancy agreement only specifies that two parking spaces are provided to the Tenant at a cost of \$10.00 each, but that it does not provide for storage.

The Tenant also sought to recover the filing fee paid to make the application.

Analysis

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

The definition of "service or facility" found in section 1 of the Act includes, but is not limited to, parking spaces and storage facilities. Accordingly, I find that the permission granted to the Tenant to use a parking space to locate his cargo trailer is a service or facility as defined under section 1 of the Act.

Section 27(1) of the Act confirms 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.

Policy Guideline #22 defines essential as "necessary, indispensable, or fundamental." It provides that when considering whether a service or facility is essential to a tenant's use of a rental unit as living accommodation, the arbitrator will consider "the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation." In this case, while I accept that the use of a parking space to locate his cargo trailer is important to the Tenant, I find there is insufficient evidence before me to conclude that a reasonable person in similar circumstances would find that the loss made it impossible or impractical for the Tenant to use the rental unit as living accommodation. Indeed, the Tenant confirmed that he has continued to live in the rental unit.

Further, Policy Guideline #22 states that a material term “is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.” When determining whether a term is material, Policy Guideline #22 provides that “an arbitrator will consider the facts and circumstances surrounding the creation of the tenancy agreement...[and] whether the tenant can obtain a reasonable substitute for that service or facility.” In this case, I find there is insufficient evidence before me to conclude that the Tenant’s use of a parking space to locate his cargo trailer is a material term of the tenancy agreement. Although agreed to by DD at the beginning of the tenancy, the Tenant’s use of a parking space to locate his cargo trailer was not included as a term of the written tenancy agreement. I also accept that the Tenant has been able to obtain a reasonable substitute. Further, EC testified and I accept that the tenancy agreement refers to the number of parking spaces assigned to the Tenant, not to their use as a location for the Tenant’s cargo trailer.

Considering the above, I find that the Tenant’s use of a parking space to locate his cargo trailer is neither essential nor a material term of the tenancy agreement as contemplated under section 27(1) of the Act. Accordingly, I find that the Tenant’s use of the parking space to locate his cargo trailer is a service or facility that can be terminated or restricted by the Landlord under section 27(2) of the Act.

Section 27(2) of the Act permits a landlord to terminate or restrict a service or facility 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 the service or facility. In this case, I accept that the Tenant’s rent has been reduced by \$10.00 to reflect the reduction in the value of the tenancy – the cost to the Tenant of one parking space. However, based on the evidence of the Tenant and EC, I find the Landlord did not give the Tenant 30 days’ written notice to terminate or restrict the Tenant’s use of a parking space to locate his cargo trailer in the approved form. Therefore, I find the Tenant’s use of the parking space to locate his cargo trailer has not been terminated or restricted in accordance with the Act and that he may continue to do so, subject to receipt of a notice to terminate or restrict in the approved form.

Having been successful, I find the Tenant is entitled to recover the \$100.00 filing fee paid to make the application. I order that this amount may be deducted from a future rent payment at the Tenant’s discretion.

Conclusion

The Tenant's use of a parking space to locate his cargo trailer has not been terminated or restricted in accordance with the Act. Accordingly, I find that he may continue to do so, subject to receipt of a notice to terminate or restrict in the approved form.

Having been successful, I order that \$100.00 may be deducted from a future rent payment at the Tenant's discretion.

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: November 1, 2022

Residential Tenancy Branch