



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FORTH GEN HOLDING, FOURTH GEN HOLDINGS LTD. CAGAYAN AIR INC. [and tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, RP, PSF, OLC
 CNR, MNRT, MNDCT, RR, PSF, OLC

Introduction

This hearing was convened by way of conference call on February 8, 2023 having been adjourned at the tenant's request from January 12, 2023, and my Interim Decision was provided to the parties.

The hearing concerned 2 applications made by the tenant which have been joined to be heard together. The first application seeks:

- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord make repairs to the rental unit or property;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law; and
- for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

The second application of the tenant seeks:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- a monetary order for the cost of emergency repairs;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law; and

- for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

An agent for the tenant and an agent for the landlord attended the hearing on both scheduled dates, and each gave affirmed testimony on the 2nd day of the hearing. The landlord also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

At the commencement of the second day of the hearing, the parties agreed that the tenant has vacated the rental unit. Therefore, I dismiss the following applications of the tenant, without leave to reapply:

- an order that the landlord make repairs to the rental unit or property;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law; and
- for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order cancelling a notice to end the tenancy for unpaid rent or utilities; and
- for an order reducing rent for repairs, services or facilities agreed upon but not provided.

Also, during the course of the hearing the tenant indicated that he did not make any emergency repairs, and I dismiss that portion of the tenant's application, without leave to reapply.

The landlord's agent advised that the tenant was served with all of the landlord's evidentiary material, but has not received all of the tenant's evidence, and described what was received. The tenant did not dispute that some evidence was not provided to the landlord, and all evidence with the exception of evidence not provided to the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for parking costs, towing costs, missed work, damages by the towing company and taxi costs?

Background and Evidence

The tenant testified that this fixed-term tenancy began on April 15, 2014 and reverted to a month-to-month tenancy after April 30, 2015, which ultimately ended on October 31, 2022. Rent in the amount of \$1,260.00 was payable on the 1st day of each month, but was raised during the tenancy to \$1,469.00 each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$630.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a 3.5 bedroom apartment in a complex containing 15 floors.

The tenant further testified that around the end of May, 2022 part of the bathroom tile collapsed leaving a gaping hole, which was not repaired by the landlord until around September, 2022. The tenant is not making a claim for that, but it is meant to demonstrate that the landlord was trying to make the tenants' lives unpleasant to make the tenants leave.

The tenancy agreement, a copy of which has been provided for this hearing states that rent is \$1,260.00, then a slash bar for parking, and the total payable is \$1,260.00; and the tenants were provided with a parking spot. On October 11, 2017 a letter was sent to the tenant by the landlord's property management company with a Parking Agreement, stating that parking has never been a part of the tenancy agreement, and should the tenant wish to continue to park on the property, the tenant must enter into the Parking Agreement, for a cost of \$35.00 per month effective November 1, 2017, and to return the signed Parking Agreement to the property management company within a week. Failure to do so would result the tenant's vehicle would be removed. The tenant testified that the landlord did not reduce rent for loss of the parking spot.

The tenant paid the \$35.00 fee for parking and then the landlord increased it to \$50.00 per month.

Notices were posted in the building on July 11, 2022 saying that a car in the garage, being stored and not insured, the landlord wants at least \$1,000,000.00 liability insurance. The tenant's car was not stored in the garage, but on an outside parking space, and was used.

The tenant received a letter dated July 26, 2022 which refers to the July 11, 2022 notice about vehicles stored or not driven must be insured. It also states that during an inspection on July 25, 2022 the tenant's vehicle was noted to have no insurance, but the tenant testified that it was insured and had Quebec plates, which have no stickers. The

letter goes on to say that accordingly, the parking agreement is terminated and the tenant must remove the vehicle that day or it would be towed. The tenant testified that the landlord was paid \$2,820.00 in surplus of what the tenant should have paid. Also, that only gave the tenant until July 31, 2022 to provide proof of insurance or the car would be towed the following day. However, August 1 was a holiday and the landlord had the tenant's car towed on August 2, 2022.

The tenant is a captain of a charter yacht, and his car was towed. The tenant didn't recall signing a Parking Agreement, but the landlord informed the tenant that it was signed by the tenant on October 20, 2017. When the landlord gave the tenant notice on July 26, 2022 to remove the vehicle that day, and then by July 31, 2022 was only 3 days notice, but the tenant's car was always insured.

The landlord removed the facility with 3 days notice without offering any compensation to the tenant, which put the tenant in a bad position. The tow bill was \$163.67 and the tenant had to take a taxi to get his car, at a cost of \$28.75, and had to miss work that day at a cost of \$300.00 salary.

The landlord was also doing some exterior painting which caused speckled white paint on the tenant's car, which cost the tenant \$332.17 for removing it with a compound and buffer.

Further, the tow truck company damaged the tenant's car by pulling it sideways. When the tenant confronted the towing company the towing slip showed no damage, and the tenant took a photograph when he picked up the car. The towing company denied any damage saying they also had a photograph but they refused to show it to the tenant. The tenant had it repaired in Quebec and testified the cost is estimated to be \$3,202.14.

Then the tenant had no parking space and no street parking and had no choice but to park the car in a nearby Safeway parking lot and had to pay \$420.00 for the month of August and \$375.00 for September, 2022 at \$15.00 per day.

The tenant claims \$2,820.00 for the overpayment of parking fees by the landlord; \$163.67 for the tow bill; \$28.75 for having to take a taxi to retrieve the tenant's vehicle; \$300.00 for loss of income; \$3,202.14 for repairs to the damaged vehicle; \$420.00 for parking in August at the Safeway parking spot, as well as \$375.00 for September; \$500.00 for the inconvenience of having no vehicle or parking elsewhere for August, September and October, 2022.

The landlord wants to charge the tenant for November, 2022 rent because the tenant gave notice to end the tenancy on October 21, 2022, but the landlord wanted to renovate. The parties also agreed to a charge of \$92.00 for cleaning drapes, and over \$500.00 for a window that had a chip in it, but the building manager knew about that for years. The landlord tried tactics to have the tenants move out so the landlord could increase the rent.

The landlord's agent testified that the Parking Agreement is separate from the tenancy agreement.

The landlord company took over management in February, 2022 and received everyone's files and there was a Parking Agreement dated in 2017 at \$35.00 per month signed by the tenant on October 20, 2017. The amount was raised to \$50.00 per month prior to the landlord property management company taking over. The tenant parked outdoors and everyone paid \$50.00 per month.

Letters were issued to tenants who parked, and all tenants provided proof of insurance except this tenant. The landlord was not aware of who the vehicle was registered to because the landlord didn't receive valid insurance from the tenant. whose car had a Quebec plate. The landlord wrote a letter to the tenant stating that his parking would be terminated and gave an extension. The tenant tried to fight it so the landlord had the tenant's car towed.

The landlord also testified that there is no evidence from the tenant to support the claims for the towing bill, taxi cab or missed work.

The landlord was under the impression that this hearing was about the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord has now made a claim on January 13, 2023, the day after the first scheduled date for this hearing. It is now scheduled for October 16, 2023 and the landlord tried to get it joined with this hearing, but it was not submitted in time.

A previous hearing dealt with a sublet, and the landlord believes that after the Decision was rendered, the tenant was upset and tried to make all of these claims against the landlord.

The landlord's witness is employed by the landlord as the resident building manager, and testified that the tenant's vehicle had a Quebec license plate. The tenant was the only tenant who didn't provide valid insurance to the landlord. The tenant was given

notice that it was required to provide insurance and was reminded on more than one occasion but the tenant ignored the notices.

The witness also testified that the tenant was aware that parking was \$50.00 per month.

SUBMISSIONS OF THE TENANT:

The landlord's testimony doesn't excuse the fact that the landlord towed the tenant's car away and the tenant couldn't go anywhere without his car. The tenant lived in the rental unit for 8 years. The landlord wanted to get rid of the tenant to get more financial benefit. The tenant didn't want any trouble, so paid the parking fee. Then the landlord towed the tenant's car on 3 days' notice making it inconvenient for the tenant without doing any research.

Analysis

Where a party makes a monetary claim as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the tenant has not provided any proof of the costs claimed for the taxi cab or the tow fees or lost wages or for parking at the Safeway parking lot. Therefore, I am not satisfied that the tenant has established element 3 in the test for damages.

With respect to parking fees, I agree that parking was included at the beginning of the tenancy, however the landlord has provided a copy of a parking agreement signed on October 20, 2017 for a monthly rental of \$35.00, which states that vehicles must be in operating condition and currently licensed and insured. I have compared the signature of the Parking Agreement to the tenant's signature on the tenancy agreement, and they do not match, nor am I satisfied that the Parking Agreement contains a signature of the tenant at all, but a printed name of the tenant.

A landlord may not change the terms of a tenancy agreement and clearly parking had no fee at the beginning of the tenancy. The landlord does not disagree that the tenant has paid the amount of \$35.00 per month from November 1, 2017 to December 31,

2021 and \$50.00 per month from January 1, 2022 to the end of the tenancy October 31, 2022, for a total of $\$35.00 \times 61 = \$2,135.00$ and $\$50.00 \times 10 = \500.00 , and I find that the tenant is entitled to recover \$2,635.00.

With respect to damages caused by the towing company, that is a matter that is properly dealt with in a claim between the tenant and the towing company, and I am not satisfied that the tenant has established that the damage was caused as a result of the landlord's failure to comply with the *Act* or the tenancy agreement.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,635.00.

The balance of the tenant's application is hereby 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 17, 2023

Residential Tenancy Branch