



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING
CORPORATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RPP, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order that the landlord return the tenants' personal property, and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony, during which I learned that the tenant's application seeks monetary compensation. The parties were given the opportunity to question each other and to give submissions.

The parties agree that evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the application is considered in this Decision.

Although the tenants' application seeks recovery of personal property, the tenants indicated that their claim is for monetary compensation with respect to the personal property. Having heard the testimony of the parties, I am satisfied that the landlord has been put on notice of the tenants' claim.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for a towing bill?

Background and Evidence

The tenant testified that this month-to-month tenancy began on May 1, 2017 and the tenant still resides in the rental unit. Rent in the amount of \$1,300.00 was originally payable, which has been increased to \$1,433.00, and the tenant testified rent is due on the 1st day of each month. There are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$650.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that on September 10, 2023 the tenant's son parked in an unassigned spot and on September 11, 2023 the tenant received notice from the landlord to move it. The vehicle was removed on September 10, prior to receiving the landlord's notice.

On September 20, 2023 the tenant's son went to the garage and his car was not in the tenant's parking spot. The tenant contacted the landlord's agents by email, copies of which have been provided for this hearing. The landlord had the vehicle towed and it ended up in a towing yard, but was removed in error. The tenant contacted another agent of the landlord who said it was towed because of the license number, which made no sense to the tenant. The tenant contacted the towing company and was told that the landlord called them to tow the vehicle because it was in the wrong spot, however it was the tenant's designated spot. The tenant's son lives with the tenant and they have been sharing that spot since July, 2021.

The agent of the landlord said the tenant would be reimbursed. On September 21, 2023 the tenant went to get the car and had to come up with \$197.00, and the tenant had to pay \$222.10 to get it out. A copy of the receipt has been provided for this hearing.

After much back and forth, the tenant received \$163.56 from the landlord about a month later. When the tenant asked why the whole bill wasn't paid, the tenant received an email message saying that the landlord doesn't pay for taxes and considered the matter closed.

The towing company charges storage on the date they pick up the vehicle. However, there was an error made by the landlord, and the tenant is struggling to put the tenant's

son through school. The car was gone with no warning, and the tenant suffers from an error that the landlord caused. The tenant claims the balance of \$58.84.

The landlord's agent testified that the tenant has 1 car registered as part of the parking agreement, and that is the only car on the tenant's update form. Only that car can park there; the vehicle belonging to the tenant's son is not in the Agreement.

The landlord's agent further testified that the tenancy agreement states that tenants may only park in an authorized stall, and the tenant must provide the landlord with information so that the landlord can identify tenants' vehicles. That is part of the update form, which only lists the tenant's car, and that the vehicle would be removed at the tenant's risk.

The landlord's agent felt sorry for the tenant and said that the landlord would pay for it. However, if the landlord's agent had looked into it further, none would have been paid. The tenant's son was not supposed to be parked in the underground parking area, but should be parked on the street. If the tenant wants another spot, the tenant would have had to pay the parking fee. A second stall is \$60.00 per month.

The vehicle is insured for storage only, and the landlord's policy says it is only vehicles registered and insured for the road are permitted unless prior written permission is granted by the landlord. The landlord does not permit storage insurance only, and the vehicle is not registered as part of the tenant's tenancy.

When asked why the landlord paid part of the bill, the landlord's agent testified that the landlord was trying to be nice, and shouldn't have paid any of the bill. The landlord's agent paid for the tow, but not the storage of the car.

SUBMISSIONS OF THE TENANT:

There was no second warning on September 20, 2023 and the vehicle was parked in the correct spot. The tenant's son didn't see the tow truck, and the testimony of the landlord's agent is not true. The car was towed in error out of the tenant's spot. The landlord's other agent said that the landlord doesn't pay storage fees, but the first day of storage and taxes should be paid by the landlord.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The other agent of the landlord had been in conversation with the tenant on September 20, 2023 by telephone. The tenant confirmed it was parked in the wrong stall, but the

tenant's son moved it to the tenant's stall. In the meantime, the tow truck had already been called. The conversation with the other agent of the landlord was after the car was towed. The towing company only has a license number, not a stall number.

Analysis

Where a tenant applies for monetary compensation from a landlord, the onus is on the tenant to satisfy the 4-part test for damages:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the landlord'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 tenant made to mitigate any damage or loss suffered.

I have reviewed the tenancy agreement and the parking agreement provided for this hearing. The tenancy agreement specifies "One parking stall only." It also states: "(ix) any motor vehicle parked in contravention of this Tenancy Agreement or in any unauthorized location within the Residential Property may be towed away at the Tenant's risk and expense." It also states that the tenant agrees to park only in authorized parking areas and parking stall(s) assigned to the tenant.

The landlord has also provided a Corporate Policy regarding parking, which includes that only vehicles listed in the Parking Agreement can occupy a designated space, and that tenants may not assign or sublet their assigned parking space. It also states that tenants or visitors in violation of the parking rules will have their vehicle towed at the owner's expense. Also provided are documents regarding tenant parking for the tenant's vehicle only, not the vehicle owned by the tenant's son.

In the circumstances and considering the evidence, I am not satisfied that the tenants have satisfied element 2 in the test for damages; the tenants have not satisfied me that the landlord has failed to comply with the law or the tenancy agreement, and I dismiss the tenants' application without leave to reapply.

Since the tenants have not been successful with the application, the tenants are not entitled to recover the filing fee from the landlord.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed 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: December 19, 2023

Residential Tenancy Branch