



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, CNL, PSF, RR, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* to cancel a notice to end tenancy for landlord use of property and for a monetary order for compensation for the loss of use of a portion of the garage and her bedroom. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

During the hearing, the tenant informed me that she had amended her application to include compensation for the loss of use of a media room and an exercise room due to a water leak that occurred at the end of October. The restoration work was done and the landlord was in the process of dealing with her insurance company. I informed the tenant that she was at liberty to make a separate application for compensation for the additional loss of livable space.

Accordingly, this application only dealt with the tenant's application to set aside the notice to end tenancy and her application for a monetary order for compensation for the loss of use of the garage and the spare bedroom.

Issues to be decided

Should the notice to end tenancy be set aside? Is the tenant entitled to compensation?

Background and Evidence

The parties entered into a tenancy agreement on August 01, 2012 for a fixed term of one year ending on July 31, 2012.

At the time the parties were entering into an agreement, they discussed the ability of the landlord to store her belongings in the garage and in the house. The landlord stated that the market rent was \$2,000.00 and she reduced it to \$1,800.00 to accommodate storage of her belongings. The tenant argued that the market value was \$1,800.00 and she requested an additional rent reduction. The landlord agreed to lower the rent to \$1,700.00.

The tenant stated that there were some items that belonged to the landlord's son which were not part of this agreement. The tenant filed copies of text messages sent at the start of tenancy requesting the removal of these items. Most of the items were removed from the garage except for an all terrain vehicle and a boat. The tenant stated that she was unable to store her vehicle in the garage and also had to store some of her belongings that were meant for the garage in her spare bedroom thereby depriving her of the use of the spare bedroom. The tenant is claiming compensation for the loss of use of the garage and spare bedroom.

On September 30, 2012, the landlord gave the tenant notice to end the tenancy for landlord use of property. The tenant disputed the notice in a timely manner and argued that the tenancy was a fixed term tenancy and the landlord was not able to end it prior to the end date of the tenancy.

Analysis

Section 49(3) states that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(2)(c) states that a notice to end tenancy for landlord's use of property, in the case of a fixed term tenancy agreement can be effective on a date that must be no earlier than the date specified as the end of the tenancy.

The parties were in a fixed term tenancy agreement with an end date of July 31, 2013. Pursuant to the above sections of the *Act*, I find that the notice to end tenancy must be set aside because the end of tenancy as stated on the notice to end tenancy is earlier than the end date of the fixed term tenancy agreement.

The tenant has provided evidence to support her arrangement with the landlord regarding the storage of the items that belong to the landlord's son. Based on the testimony of both parties, I find that the landlord failed to have all items belonging to her son removed from the garage thereby depriving the tenant of the use of a portion of the garage. The tenant stated that she stored her items in the spare bedroom, but the photographs show approximately half the garage empty and available for storage. The tenant stated that the engine of the boat prevented her from parking her vehicle in the garage.

I find that the tenant was not able to park her vehicle in the garage and have ordered the landlord to change the position of the boat immediately so that the tenant may park her vehicle. I further order the landlord to have the ATV and the boat removed from the garage by November 30, 2012.

The tenant had space in the garage to store other items that she says she stored in her spare bedroom. I find that the tenant's claim for loss of use of the spare bedroom is without merit and accordingly it is dismissed.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Taking into account that the tenant already has a reduced rent to accommodate storage of the landlord's items, I find it appropriate to award the tenant a minimal award of \$150.00 towards the loss of use of a portion of the garage. Since the tenant has proven most of her case, I award her the recovery of the filing fee of \$50.00

Overall the tenant has established a claim of \$200.00. I order the tenant to make a onetime deduction of this amount from a future rent.

Conclusion

The notice to end tenancy is set aside. The tenancy will continue as per the terms of the original tenancy agreement.

I order the landlord to adjust the location of the boat immediately to allow the tenant to park her vehicle inside the garage. I further order the landlord to have the ATV and the boat removed by November 30, 2012.

The tenant may make a onetime reduction of \$200.00 from a future rent.

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 09, 2012.

Residential Tenancy Branch

