



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes DRI OLC FF O

Introduction

This hearing dealt with an application by the tenant to dispute a rent increase and for an order that the landlord comply with the Act, regulation or tenancy agreement. Despite having been personally served the notice of hearing and application for dispute resolution on October 22, 2009, the landlord did not attend the hearing. One of the two applicant tenants, GW, participated in the teleconference hearing.

Issues(s) to be Decided

Can the landlord increase the rate for parking?

What is the current rent?

Is DS a tenant or an additional occupant?

Can the landlord increase the security deposit during the tenancy?

Background and Evidence

The tenant GW has lived in various units in the apartment building for approximately 10 years. On January 1, 2008, GW moved into his current unit with another tenant, JE. The tenancy agreement does not name any tenant, and only JE signed the agreement. The tenancy agreement indicates that a security deposit of \$412 was paid in July 2006, and GW's testimony was that the security deposit was carried over into his current tenancy from a previous tenancy in the building. The tenancy agreement also indicates that the rent on January 1, 2008 was \$750, and that parking was an additional \$36, at a rate of \$12 each for three parking stalls.

On September 1, 2008 JE moved out of the unit and GW became the sole tenant. The security deposit remained in place and the rent remained at \$750 plus \$24 for two parking stalls and the lower parking level.

On February 1, 2009 GW informed the landlord that a new tenant, DS, would be moving into the unit as of March 1, 2009. GW's evidence was that the landlord accepted DS as a new tenant and assigned her a parking stall on the first parking level at a rate of \$20. Beginning March 1, 2009, the tenants paid \$750 for rent plus \$44 for three parking stalls. The tenants' evidence includes cheques issued by DS and accepted by the landlord for payment of rent.

On August 24, 2009 the landlord gave the tenants notice that the parking rate would be increased from \$12 to \$20 per stall for the lower level parking, and from \$20 to \$25 per stall for parking on the first level. On September 1, 2009 the tenant made an agreement with the landlord that he would park both of his vehicles, one of which is a motorcycle, in one slot on the lower level. As of September 1, 2009 the tenants paid \$750 for rent plus \$20 for one parking stall on the lower level and \$25 for one parking stall on the first level.

On October 20, 2009 the tenant GW received a letter from the landlord, in which the landlord stated that there were "problem areas which need to be resolved," as follows:

- 1) Parking – each motorized vehicle must be parked in a separate assigned parking space
- 2) Visitor living in suite in excess of two weeks – the landlord indirectly referred to DS as a "visitor" and stated that as DS was an additional occupant who was staying in the unit without written permission, the tenant GW had breached his tenancy agreement and the landlord was therefore terminating GW's tenancy as of October 31, 2009

- 3) \$20 rent increase – the landlord increased the rent by \$20 per month and the tenant had not been paying the increase
- 4) the tenant's security deposit was “inadequate” for his present suite.

GW's testimony was that although the landlord claimed to have given GW a notice of rent increase in March 2009, he never received such notice, in the prescribed form or otherwise.

Analysis

In considering the undisputed evidence of the tenants, I find as follows. The written tenancy agreement is flawed in that it does not identify any individual as the tenants; however, the agreement does identify the rental unit in question and I accept GW's evidence that this written agreement sets out the terms of his tenancy in that unit.

I accept the tenants' evidence that DS was approved as an additional tenant in this unit and assigned a parking stall, that the landlord accepted rent from DS on more than one occasion, and that DS is a tenant, not an occupant. Therefore, the landlord cannot allege that GW breached a term of the tenancy agreement by allowing an additional occupant. In any case, if a landlord seeks to end a tenancy on the basis that a tenant has breached a material term of the tenancy agreement, the landlord must first give the tenant written notice of the breach and an opportunity to rectify the breach, and then if the tenant fails to do so the landlord must serve the tenant with a one month notice to end tenancy for cause in the prescribed form.

In regard to the rent increase, I accept the tenant's testimony that he did not receive any notice of a rent increase. The rent therefore remains at the rate of \$750 per month until such time as the landlord serves the tenant with a notice of rent increase in the prescribed form. The increase must be within the allowable amount, which for 2010 is 3.2 percent, and the notice must be served at least three full calendar months before

the increase takes effect. For example, if the landlord serves the notice in December 2009, the increase cannot take effect until April 1, 2010 at the earliest.

In regard to the security deposit, a landlord may only collect a security deposit at the outset of a tenancy, and may not increase the amount of the security deposit during the tenancy. I accept the tenants' evidence that the security deposit paid was \$412, that the tenancy continued with GW as the sole tenant after JE moved out, and that the security deposit remained in place. The landlord may not seek an additional security deposit under this tenancy agreement.

In regard to the parking, I find as follows. The tenancy agreement sets out that the parking is \$36 per month for three stalls at \$12 each. When JE moved out, GW continued to rent two stalls at the rate of \$12 each. The landlord therefore may not increase the rate of those two stalls while this tenancy continues, because to do so amounts to an illegal rent increase. The landlord may require that each motorized vehicle must be parked in a separate parking space, but the landlord must provide the tenant with two lower level parking stalls at the rate of \$12 per stall, and the rate for lower level stalls must remain at \$12 each for the duration of this tenancy.

In regard to DS's parking stall on the upper level, I find that DS entered into an agreement with the landlord regarding the rate of \$20 for her parking stall, and that the landlord cannot increase the rate for DS's parking stall beyond \$20 for the duration of the tenancy.

Conclusion

I order that the landlord comply with the Residential Tenancy Act, regulation and tenancy agreement, particularly in regard to the issues raised in this application regarding rent increases, parking, security deposits and notices to end tenancy. Should the landlord fail to comply with the Act, the tenants may apply for monetary compensation.

As the tenants' application was successful, they are entitled to recover the \$50 filing fee for this application, which they may deduct from their next month's 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: December 16, 2009.

Dispute Resolution Officer