



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes DRI, CNR

Introduction

This hearing was convened by way of conference call to deal with the tenant's application to dispute an additional rent increase and cancel a Notice to End Tenancy for unpaid rent or utilities.

Both parties attended the hearing and gave evidence.

Issues(s) to be Decided

Should the additional rent increase be cancelled?

Should the Notice to End Tenancy for unpaid rent or utilities be cancelled?

Background and Evidence

This month-to-month tenancy began approximately 8 years ago. The rent is presently \$668.00 which is due on the 1st of each month. There are no rent arrears owing to the landlord. The tenant paid a security deposit at the outset of the tenancy in the approximate amount of \$300.00. No Tenancy Agreement was entered into evidence. The tenant stated that there was nothing in the Tenancy Agreement about parking.

The tenant testified that the dispute is in relation to the parking area of the complex. The complex is an apartment building with more tenants than parking spots, and parking in the carports on the property is on a first-come-first-serve basis. The tenants generally park in the same spots each day if they can, or if none are available, they park on the street.

When the tenant first moved into the complex, he had no vehicles but now has 3 vehicles. He parks his van in a carport stall and another vehicle behind it. He stated that doing so does not block anyone else coming or going from the parking lot, and he parks the 3rd vehicle on the street. The van and one other vehicle are only insured for work purposes, which is about 10 months of the year. All vehicles have plates on them and all are in good running condition. Presently only one of the vehicles is insured.

The tenant testified that there is no storage in the unit that he rents, and he has a futon mattress strapped to the roof of the van parked under the carport. He stated that it is not an eyesore and he has never been asked to move it. He stated that if the landlord wanted him to move it, he should have told him that.

A letter from the landlord to the Residential Tenancy Branch was entered into evidence, which states that the general policy is no charge for parking, "Provided that the auto is functional and have valid insurance." The letter goes on further, "We therefore demand \$75.00 monthly for each of his unlicensed auto to encourage him to dispose the unsafe auto effective from October 2009." The letter also states that a letter from the caretaker manager is attached that confirms the parking policy. All that was attached was a copy of an email that says nothing about a written policy. No evidence was heard with respect to any of the autos being unsafe.

The letter also goes on to say, "This situation creates problems to the safety of other tenants of the building due to the two autos have fire hazards, sanitation issues and environmental health issues." The landlord testified that if someone threw a match at the futon mattress, it would catch fire.

Photographs of the vehicles were entered into evidence by the landlord, which show the vehicles without valid insurance decals. This is not disputed by the tenant, and the tenant also testified that other tenants have more than one vehicle in the parking lot.

The landlord's testimony and photographs also show a vehicle with a flat tire. This is not disputed by the tenant, but he states that as soon as he was aware that the tire was flat, he inflated it with his portable air compressor.

The tenant also supplied a Notice of Rent Increase as evidence to these proceedings. That document shows that the last rent increase came into effect on April 1, 2009 and another increase is scheduled for April 1, 2010 in the amount of \$21.00 per month. The document is dated December 17, 2009.

Analysis

The landlord is well within the *Act* and the Regulations to increase rent every 12 months as long as that increase does not exceed 3.2%, which is based on the inflation rate. I find that the landlord is entitled to increase rent by \$21.00 per month by giving the tenant 3 months notice of such increase, which he has.

As for the additional increase, the landlord has failed to provide sufficient evidence to justify his demand for me to order the tenant to pay an additional \$150.00 per month for 5 months of parking. I also find that if there is a policy with respect to parking, it should be included in the Tenancy Agreement and the tenant ought to have been told about it at the time that he moved into the unit. I also find that the landlord failed to provide sufficient evidence about a fire hazard. His statement that a match being thrown on it would cause a fire is not acceptable as a fire hazard. Further, I heard nothing from the landlord about sanitation issues or environmental health issues.

If the landlord has a concern about the parking situation, or the futon mattress, it would be prudent for him to talk to the tenant about it rather than demanding more money as a way to discourage the use of the parking lot. I also find that the tenant is permitted to park his vehicles in the parking lot.

Conclusion

The tenant's application is hereby allowed, and the landlord is not entitled to the additional rent increase.

The parties did not supply me with a copy of a Notice to End Tenancy for unpaid rent or utilities, but due to the evidence that the tenant is not in arrears, I hereby dismiss that portion of the tenant's application, with 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: March 02, 2010.

Dispute Resolution Officer