

DECISION

Dispute Codes OLC, RR, FF, O

Introduction

This hearing dealt with the tenant's application for Orders for the landlord to comply with the Act, regulations or tenancy agreement; for authority to reduce rent payable; recovery the filing fee paid for this application and other issues. Both parties appeared at the hearing and confirmed service of documents upon them. Both parties were provided the opportunity to be heard and to respond to the submissions of the other party.

Issues(s) to be Decided

1. Is it necessary to issue Orders to the landlord for compliance with the Act, regulations or tenancy agreement or for any other actions?
2. Is the tenant entitled to free parking or a rent reduction?

Background and Evidence

I heard undisputed evidence as follows. The residential property is located in a stratified building. The landlord is a society and has multiple units in the building that it rents to tenants. On June 1, 2005 a tenancy agreement between the landlord and tenant commenced for unit 206 in the residential property. The landlord and tenant subsequently agreed that starting February 1, 2008 the tenant would reside in unit 101 in the same residential property. The tenant's monthly rent payable increased from \$850.00 to \$875.00 as of February 1, 2010. No security deposit has ever been paid by the tenant.

I was also provided undisputed evidence that in November 2009 the landlord requested the tenant pay a security deposit of \$400.00. The tenant has not paid the deposit and the landlord has not pursued further action regarding the security deposit.

I was also provided undisputed evidence that since 2005 the tenant has been permitted the use of one parking space on the residential property. Allocation of parking spaces is the responsibility of the Strata Council. Until recently, the Strata Council has not charged for use of parking spaces. In April 2010 the Strata Council passed a bylaw permitting the Strata Council to charge \$15.00 per month for the use of one parking space.

The tenant received documents written by the Strata Council April 10, 2010 indicating parking for one space would cost \$15.00 per month starting May 1, 2010. The tenant wrote to the landlord and the Strata Council with respect to the imposition of the parking charge. The landlord wrote to the tenant to inform the tenant parking was not included in rent and would be a fee payable in addition to monthly rent. The Strata Council wrote to the tenant and advised the tenant that her vehicle would be towed from the residential property if parking fees were not paid. The parties informed me during the hearing that the Strata Council has not required payment of parking fees or towed the tenant's vehicle pending outcome of this decision.

The tenant is requesting Orders for the landlord to prepare a written tenancy agreement and provide the tenant with a copy of the signed agreement. The tenant is requesting the landlord be ordered to pay for parking or provide the tenant with authority to reduce rent in recognition of the loss of free parking. The tenant is requesting future communication from the Strata Council be directed to the landlord. The tenant alleged the landlord's agent has been abusive and requested all future communication with the landlord be in writing.

The landlord submitted that a tenancy agreement was prepared at the commencement of the tenancy for unit 206; however, the landlord could not locate a copy of that agreement. The landlord testified that their standard tenancy agreements do not

provide for free parking. The landlord explained that when the tenancy commenced for unit 206 the tenant did not have the money to pay the security deposit and when this came to light more recently and a request was made for payment.

The landlord acknowledged the Strata Council communicated with the tenant with respect to parking as the Strata Council is responsible for managing parking. The tenant's advocate commented that it was stressful for the tenant to deal with the Strata Council when matters relate to provisions under the tenancy agreement. Upon enquiry, the landlord acknowledged that it is likely the landlord has not filed all required documents under the *Strata Property Act*, such as a Form K, or as required by the Strata Council with respect to this unit being a rental unit.

The landlord's agent denied abusive behaviour towards the tenant. The landlord also stated that the landlord's agent will no longer be acting as the landlord and indicated that the tenant's request for all communication to be in writing is not necessary.

The landlord did not object to preparing a written tenancy agreement and submitted that they have a standard agreement they use for their tenancies. A copy of the landlord's standard tenancy agreement was not submitted by the landlord as evidence. Having not seen the landlord's standard tenancy agreement, the tenant's advocate requested the standard tenancy agreement prepared by the Residential Tenancy Branch be used by the landlord. The terms of a standard residential tenancy agreement prepared by the Residential Tenancy Branch were reviewed during the teleconference call. The parties were able to agree on all terms of tenancy except for the provision of parking.

Analysis

Under the Act, a tenancy means a tenant's right to possession of a rental unit under a tenancy agreement. A tenancy agreement means "an agreement, whether written or

oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services or facilities”.

Pursuant to the definitions above, I find that when the parties agreed that the tenant would move to unit 101 a new tenancy formed. Under section 13 of the Act, a landlord is required to prepare a written tenancy agreement for every tenancy. Therefore, the landlord was required to prepare a written tenancy agreement with respect to unit 101 even if there was a written agreement for unit 206.

A tenancy agreement must stipulate the date on which the tenancy starts. An agreement cannot require retroactive performance; therefore, until the parties duly execute the written agreement the parties are considered to have a verbal tenancy agreement in place for unit 101. Upon signing the written tenancy agreement the parties are considered to have entered into a new tenancy agreement.

As the tenant requested a written tenancy agreement, I hereby ORDER the landlord to prepare a written tenancy agreement using the agreement provided by the Residential Tenancy Branch and present the tenant with the agreement for her signature forthwith. Upon signature of both parties, the landlord must provide a copy of the signed agreement to the tenant within 21 days of entering into the agreement.

Upon review of the terms of the standard tenancy agreement during the hearing, the landlord must indicate the following services and facilities are included in the payment of rent: water, stove and oven, dishwasher, refrigerator, carpets, window coverings, laundry, garbage collection, and use of common room. Other terms also agreed upon

by the parties include no pets and no smoking in the rental unit. This provision for parking and the requirement to pay a security deposit is addressed below.

Having heard undisputed testimony that the tenant has been parking in one space on the residential property for approximately five years and a lack of evidence to indicate

parking was not a service or facility provided under the tenancy agreement, I find it more likely than not that there was at least an implied agreement that parking was a service or facility provided to the tenant under the current verbal tenancy agreement.

Under section 27 of the Act, a landlord may terminate or restrict a service or facility, other than an essential service or facility or material term, if the landlord gives 30 days of written notice to the tenant and reduces the rent in an amount that is equivalent to the reduction in value of the tenancy agreement. Under the Act, parking spaces are included in the definition of service or facility. I do not find the provision of parking to be essential to the tenant's use of the unit as living accommodation or a material term of the tenancy agreement. Therefore, pursuant to section 27(2) of the Act, I find the landlord is entitled to terminate the provision of free parking upon an equivalent reduction in rent payable and 30 days of written notice.

In light of the above findings, in preparing the written tenancy agreement, the landlord may chose to either:

1. Provide parking at no charge to the tenant and pay the Strata Council for parking for one space for use by the tenant, OR
2. Reduce the rent payable by an amount that is equivalent to the reduction in value of the tenancy.

From the evidence presented to me, I find the equivalent reduction in value of the tenancy is \$15.00 per month.

Under section 20 the Act, a landlord must not require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement. Upon entering the new written tenancy agreement, the landlord is permitted to require payment of a security deposit and the tenant will be required to pay the security deposit

by the date specified in the tenancy agreement. The parties are at liberty to negotiate the amount of the security deposit (up to one-half of the monthly rent) and the date by which the deposit must be paid.

As I heard there has been or there is about to be change in agents dealing with the tenant I do not find it necessary to impose orders upon the landlord to ensure all communication from the landlord is in writing.

Based upon the testimony of the landlord, I find it likely that the Strata Council may be communicating with the tenant because the landlord has not have filed all necessary documents with the Strata Council with respect to this unit being a rental. I cannot issue Orders to the Strata Council to cease communicating with the tenant as the Strata Council is not the landlord. However, it is within my authority to require the landlord to direct the Strata Council to communicate with the landlord rather than the tenant where appropriate. Therefore, I ORDER the landlord to determine and file all documents required by the Strata Council and under the *Strata Property Act* with respect to this unit being a rental.

Having found the landlord breached the Act by not preparing a written tenancy agreement when the tenancy for unit 101 formed I find much of this dispute could have been avoided. Therefore, I award the filing fee to the tenant. The tenant is authorized to deduct \$50.00 for a subsequent month's rent in satisfaction of this award.

Conclusion

The landlord must prepare and present a written tenancy agreement to the tenant for signature. Upon obtaining the tenant's signature, the landlord must provide the tenant a copy of the agreement within 21 days. The tenancy agreement must reflect either free

parking at the rental rate of \$875.00 per month, or, the landlord may not include parking and monthly rent of \$860.00. The landlord may require payment of a security deposit upon entering into the written tenancy agreement. The landlord must ensure all documents required by the Strata Council and under the *Strata Property Act* are filed with the Strata Council forthwith.

The tenant has been awarded recovery of the filing fee and may deduct \$50.00 from a subsequent 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: July 20, 2010.

Dispute Resolution Officer