



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied to dispute an additional rent increase and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Tenant submitted documents to the Residential Tenancy Branch, which included a copy of the tenancy agreement, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings. The Landlord submitted no evidence.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to impose a parking fee and whether the Tenant is entitled to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on July 01, 1997; that the current Landlord purchased the property in 1999; that the Tenant is currently obligated to pay monthly rent of \$807.00 by the first day of each month; and that the Landlord imposed the last rent increase on January 01, 2012, in the amount of \$33.00.

The Tenant stated that since the start of this tenancy he has had a designated, covered parking space; that he has never paid for that parking space; that several years ago he and another Tenant agreed to exchange parking spaces, both of which were covered; that the Landlord did not authorize or coordinate this exchange; that everyone parks in designated spaces; that the building manager knows which spaces are designated to which tenants; and other tenants never park in his designated space.

The Agent for the Landlord stated that there are 21 units in this residential complex and only 18 parking spaces; that some tenants have more than one parking space; that the Landlord does not maintain a list to show where each tenant parks; that the parking spaces are not designated and have been used on a "first come, first served basis"; that she "believes" the building manager knows which vehicle belongs to which tenant, but not where each tenant regularly parks; and that she understands the Tenant has been parking on the property during his tenancy. At the conclusion of the hearing she stated that the parking lot is never full and that parking spots are always available to tenants.

The Landlord and the Tenant agree that the Landlord served the Tenant with a memorandum, dated April 26, 2012, which informed the Tenant that a monthly parking fee of \$20.00 for covered and \$10.00 for uncovered was to be imposed, effective June 01, 2012. The Tenant contends that this is an additional rent increase as he is now being charged for a service that was previously provided without charge.

The Agent for the Landlord argued that this is not an additional rent increase because his rental agreement does not specify that he is entitled to parking and that he is simply being asked to pay for this service, just as he is required to pay when he uses the coin operated laundry facilities.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant was permitted to park a vehicle on the residential property, without charge, from the start of this tenancy until June 01, 2012. I therefore find that this was a service that has historically been provided to the Tenant during his tenancy. Although there is no reference to parking in the written tenancy agreement, which makes no reference to any services included with the tenancy, I find that the historical nature of the arrangement is sufficient grounds to conclude that unpaid parking was provided as a service during this tenancy.

I find that charging the Tenant for parking, which is a service he has enjoyed for the majority of his tenancy, constitutes a rent increase.

Section 41 of the *Act* prohibits landlords from increasing the rent, except in accordance with the legislation. Section 42(1)(b) of the *Act* specifies that a landlord may not increase the rent for at least 12 months after the effective date of the last increase. As the rent was last increased on January 01, 2012, the Landlord cannot increase the rent again until January 01, 2013.

As the Landlord does not have the right to increase the rent until January 01, 2013, I find that he cannot impose the parking fee until that date, as the fee is essentially a rent increase.

Section 27(2)(b) of the *Act* stipulates that a landlord may terminate a non-essential or non-material term of a tenancy agreement only if the Landlord reduces the rent in an

amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction in the service or facility. In these circumstances, the Landlord has the right to terminate the Tenant's access to covered parking, providing the Landlord reduces the Tenant's rent by \$20.00 per month and the Landlord provides the Tenant with 30 days' written notice of the rent reduction in the approved form, pursuant to section 27(2)(a) of the *Act*

Conclusion

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to \$50.00 in as compensation for the cost of filing this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Tenant to reduce one monthly rent payment by \$50.00 in full compensation for this filing fee.

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: June 19, 2012.

Residential Tenancy Branch