



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAP REIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

DRI, OLC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has applied to cancel a rent increase, an Order the landlord comply with the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Has the landlord imposed a rent increase that does not comply with the Act?

Must the landlord be Ordered to comply with the Act?

Background and Evidence

A copy of the tenancy agreement supplied as evidence indicated the tenancy commenced in July 2004. Rent is currently \$969.22 due on the 1st day of each month.

Clause 33 of the tenancy agreement states:

*Parking space whether indoors or outdoors will be allocated by the building manager.
Payment for additional parking spaces is to be made monthly at the time suite rental is paid and will be at the rates in effect.*

There was no dispute that the tenant has parked in the same parking space provided since the start of the tenancy in 2004. The tenant's rent has been increased over the past 10 years. The tenancy agreement does not include a separate fee or charge for parking of the tenant's vehicle; only for additional parking. The tenant said parking has always been included with rent.

The landlord said they have reviewed the parking allotments. The landlord said that the tenancy agreement does not indicate that parking is included with rent. The landlord may provide free parking as an incentive, but not throughout a tenancy. The landlord assumed control of the rental unit building approximately 5 years ago. A new tenancy agreement has not been signed; the original contract terms remain.

The \$30.00 per month increase in rent was imposed 3 months ago; the tenant has not paid that increase.

Analysis

From the evidence before me I find that the terms of the tenancy agreement do reference parking and that the tenant has been able to rely on clause 33 of the tenancy agreement. Throughout this 10 year tenancy the tenant has parked in the same parking stall and received that service or facility, as part of rent paid. No additional fee has been paid for parking.

I find, pursuant to section 62(3) of the Act that rent includes parking and that the imposition of a parking fee would constitute a rent increase. There is no evidence of any separate parking agreement, signed by the parties. The landlord is entitled to raise rent once every 12 months, in the sum set by government, in the approved form. Any increase that exceeds the allowable annual rent increase would be unenforceable.

Therefore, I find that the tenant's rent will remain at the current rate and that the tenant is entitled to continue to park in the assigned parking space he has used throughout the tenancy. While the landlord may wish to generate an increase in payments made by the tenant; the evidence does not support the submission that parking has not been included as a service or facility included with rent payments made. No increase in rent or fee may be imposed for parking unless the tenant voluntarily agrees, in writing, to a change in the terms of the tenancy agreement, pursuant to section 14 of the Act.

As the application has merit I find that the tenant may deduct the \$50.00 filing fee from the next month's rent due.

Conclusion

The tenant is entitled to use of the parking space that has been in use since the start of the tenancy. No increase in rent or fee may be imposed for parking unless the tenant voluntarily agrees, in writing, to a change in the terms of the tenancy agreement.

The tenant is entitled to deduct the \$50.00 filing fee cost from the next month's rent due.

This decision is final and binding and 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: October 29, 2014

