



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST SERVICE RESIDENTIAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPC and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for “other”, and to recover the fee for filing this Application.

The Tenant stated that on December 30, 2014 the Application for Dispute Resolution, the Notice of Hearing, and one document, dated December 18, 2014, were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On January 12, 2015 the Tenant submitted additional documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents, with the exception of the tenancy agreement, were served to the Landlord by registered mail on January 13, 2015. The Landlord acknowledged receipt of these documents, with the exception of the tenancy agreement. The documents that were served to the Landlord were accepted as evidence for these proceedings, but the tenancy agreement was not.

The Landlord stated that on January 08, 2015 the he faxed a copy of a parking agreement to the Residential Tenancy Branch, although I did not receive the document that was submitted by the Landlord. The Landlord and the Tenant agree that this parking agreement was submitted in evidence by the Tenant so it will be considered as evidence for these proceedings.

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

Issue(s) to be Decided

Is the Landlord entitled to increase the cost of parking from \$50.00 to \$75.00?

Background and evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2013 and that they entered into a written tenancy agreement. The Landlord and the Tenant agree that the tenancy agreement stipulates that the Tenant “will pay the rent of \$1,200.00 and parking of \$50.00 each month”. The parties agree that rent was increased to \$1,225.00 on August 01, 2014.

The Landlord and the Tenant agree that they also signed a parking agreement, which was submitted in evidence. This agreement outlines some of the terms related to parking.

The Landlord and the Tenant agree that the Landlord intends to increase the parking fee to \$75.00 per month, effective February 01, 2015. The Tenant argues this is an unreasonable increase.

The Landlord contends that it is a reasonable increase as the cost of secure monthly parking in the area is, on average, \$100.00. The Tenant contends the increase is unreasonable as he can find parking across the street for \$50.00 per month. Neither party submitted evidence to corroborate their testimony.

The Tenant submitted an unsigned decision from a dispute resolution hearing, dated January 04, 2013, in which an Arbitrator concluded that when parking is included in the rent a landlord cannot charge an additional amount for parking and the rent must be increased in accordance with the *Act*. The Arbitrator further concluded if a tenant's parking is separate from rent; the landlord cannot increase the fee for parking as the *Act* does not allow for fee to be increased.

Analysis

The *Act* defines “rent” as money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but

does not include a security deposit; a pet damage deposit; or a fee prescribed under section 97(2)(k) of the *Act*. The definition of “services and facilities” in the *Act* includes parking.

I interpret this to mean that when parking is provided as a service with the tenancy and there is no separate charge for parking, any payment made for parking should be considered “rent”.

In these circumstances I find that parking was not included with the rent. Rather, I find that the Tenant agreed to pay rent of \$1,200.00 and a parking fee of \$50.00. I based this conclusion on the undisputed evidence that the tenancy agreement clearly separates the two payments and that they have a separate parking agreement which outlines the terms and cost of parking.

Part 3 of the *Act* sets limitations on how rent can be increased. As I have determined that parking was not included in the rent, I find that Part 3 does not apply to any fees charged for parking.

Section 97(2)(k) of the *Act* stipulates that regulations may be created to deal with fees a landlord may charge a tenant. Section 7 of the *Residential Tenancy Regulations* provides for non-refundable fees a landlord may charge a tenant.

Section 7(1)(g) of the Regulations provides that a landlord may charge a tenant a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement. As parking is not a service or facility the Landlord was required to provide under the tenancy agreement in these circumstances, I find that the Landlord has the right to charge a separate fee for parking.

I note that there is nothing in the legislation that limits fees that can be charged for parking when it is provided outside of the tenancy agreement. I note that although Part 3 of the *Act* places limits on rent increases, fees are not subject to Part 3 of the *Act*. I am aware of nothing in the legislation that limits how fees for parking can be increased when the cost of parking is not included in the rent. I therefore find that I have no authority to limit a parking fee increase in these circumstances and I dismiss the Tenant’s application for an Order requiring the Landlord to comply with the *Act*.

In determining this matter I note that I have not determined whether the proposed \$25.00 parking fee increase is reasonable, as that is outside of my jurisdiction.

In determining this matter I note that my decision appears inconsistent with the unsigned decision from a dispute resolution hearing, dated January 04, 2013, which was submitted in evidence. In that decision the Arbitrator appears to conclude that if a tenant’s parking is separate from rent, the landlord cannot increase the fee for parking as the *Act* does not allow for fee to be increased. I interpret the legislation differently. I find that if the legislation does not limit a fee increase, a fee increase can be imposed.

I note that section 64(1) of the *Act* stipulates that I am not bound to follow other decisions. This section of the *Act* requires me to make my decision on the merits of the case as disclosed by the evidence admitted. This decision is based on the unique circumstances of this matter and my interpretation of the legislation.

Dated: January 24, 2015

Residential Tenancy Branch

