



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, OLC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”)

1. Disputing a rent increase – Section 43; and
2. Seeking an Order for the Landlord to comply – Section 62.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to a parking spot at the rate paid over the tenancy?

Background and Evidence

The tenancy started August 1, 1998. Rent of \$1,567.00 is currently payable monthly on the first day of each month.

The Tenant states that when she first agreed to rent the unit it was on the basis that as soon as a parking spot became available the Tenant would be provided one at \$20.00 a month payable with the rent on the first day of each month. The Tenant states that the parking was provided to her for as long as she was a tenant and wanted to have the parking. The Tenant states that there was a waiting list for other tenants wanting a parking spot and those spaces were assigned only to other tenants as they became available when tenancies ended. The Tenant states that a spot did become available in 2000 and that Tenant then was given that spot. The Tenant states that the parking

portion has never increased and that the parking amount was paid with the rent since then. The Tenant states that she had no power to alter the written tenancy agreement to note that parking was included with the rent but that the parking charge is in actuality part of the rent as it was required to be provided to the Tenant with the unit.

The Tenant states that new owners took over in June 2015 and informed the Tenant that the cost for the parking would increase to \$300.00 as of September 2015. The Tenant states that there have been no changes to the written agreement since the new owners have taken over. The Tenant states that she moved out of the parking spot pending the outcome of this hearing. The Tenant seeks an order that the Landlord provide the Tenant with a parking spot at \$20.00 per month.

The Landlord states that parking is not provided for in the tenancy agreement and is not noted on the rental application. The Landlord states that past rent increases did not include the parking amount. The Landlord states that they have no record of a separate written agreement for parking. The Landlord states that they have no information from the previous owners. The Landlord states that there are 7 parking spots and 23 units. The Landlord states that they are not willing to provide the Tenant with a parking spot at the same rate but can provide a spot should the Tenant be found entitled to one. The Landlord points to a previous decision of the RTB that allowed the landlord to increase the rental of a \$20.00 parking spot to \$300.00.

The Tenant states that the increased fee being sought by the Landlord is exorbitant and not anywhere near the cost of other tenant parking spots in the area. The Landlord states that the amount is based on similar single car garages being advertised for rent and that range between \$300.00 and \$450.00 per month. The Tenant states that the Landlord's examples are detached garages used for commercial or storage purposes and are not meant for tenants of a rental building. The Tenant states that her research of comparable parking provided for tenants shows rates of \$50.00 per month. The Tenant states that her situation is different than a couple of earlier decisions made in relation to parking.

Analysis

The Act defines “Rent” as money paid to a landlord in return for the right to possess a rental unit and for services or facilities. A “service or facility” includes parking where it is provided or agreed to be provided by the landlord to a tenant of a rental unit. Section 7 of the Residential Tenancy Regulations provides that a landlord may charge 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. “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 and facilities.

While it is undisputed that there is no provision in the written tenancy agreement for a parking charge, I note that a parking provision is available by usual course as it is contained as an option in the written tenancy agreement. It is undisputed that the Landlord agreed to provide parking when available under the waiting list and that the Tenant was thereafter provided parking on payment terms of \$20.00 per month payable with rent. There is no evidence that the persons on the waiting list were other than tenants in the building. Although the parking terms were not reduced to writing or inserted into the tenancy agreement, there is no ambiguity on the terms of the provision of parking and the agreement was acted on by both Parties for at least 15 years and until August 2015. I also accept that the Tenant was provided parking until the tenancy ended or as otherwise ended by the Tenant. As a result I find that the provision of this parking became an implied term of the tenancy agreement in 2000 and therefore a facility required to be provided under the tenancy agreement. As such the monies collected for parking may not be seen as a fee collectable under the Regulation but as monies paid for services and facilities required to be provided to the Tenant. I consider the Landlord’s failure to include the parking portion monies in the rent increase calculations to be of little weight or relevance in making this finding.

Given the evidence of the Landlord unilaterally increasing the parking fee, I accept that these actions triggered this dispute and that the Tenant did not end the parking agreement but only stopped parking in the spot until this dispute was resolved. I find therefore that the Tenant is entitled to the provision of parking at \$20.00 per month until the tenancy ends or as increased under the rental provisions of the Act.

Section 64(2) provides that each decision must be made on the merits of the case as disclosed by the evidence admitted and a decision is not bound to follow other decisions under this Part. Although the Landlord points to a previous decision, the evidence in the present case contains greater evidentiary detail on the merits of the case and raises the issue of implied terms of a tenancy agreement that was not considered in the previous decision. I am therefore not bound to follow the previous decision.

Conclusion

I order the Landlord to comply with the tenancy agreement and to provide the Tenant with its parking space at \$20.00 per month until the tenancy ends or as increased under the rental provisions of the Act.

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: November 13, 2015

Residential Tenancy Branch

