



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding William Nemetz Investments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

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Introduction

This hearing was scheduled in response to the tenants' application in which the tenant has applied requesting confirmation of parking.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained 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.

The tenant did not make a written submission. The tenant confirmed receipt of the landlords' two pages of evidence.

Issue(s) to be Decided

Is the tenant entitled to one or two parking spaces?

Background and Evidence

This tenancy commenced in 1999. Rent is currently \$780.00 per month. There was no dispute that rent includes the parking fee and that a single space was provided at the start of the tenancy. Past rent increases have been issued based on the total rent owed, that includes parking. Originally the rent was \$615.00 plus \$5.00 for parking, for total rent of \$620.00.

The landlord read from the tenancy agreement and the parties agree there is a clause that set out how a parking space should be used.

The tenant has applied requesting an order that he continue to have use of two parking spaces. The tenant said that approximately 16 years ago the manager at that time gave him permission to use a second parking stall for his daughter. The landlord charged the tenant an additional \$10.00 per month for that parking space. The tenant has now been told he may use only a single space and that he had to move his trailer from the second parking space that he has used for years.

The landlord said that the tenant could not have used the second parking space for 16 years as the previous manager started working there less than 10 years ago.

The tenant had a record of rent increases issued over the years. The landlord submitted a breakdown of rent and parking that has been paid since 1999, with increases commencing in 2001. According to the landlord's submission, to 2014 there have been seven rent increases. There was some debate regarding a rent reduction that might have reflected the removal of the second parking spot in the past; although the records referenced by each party differed. The landlord said that her calculation had an error and that the parking fee has always been \$5.00.

Analysis

I have considered the definition of rent provided in the Act:

"rent" means 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 any of the following:

- (a) a security deposit;*
- (b) a pet damage deposit;*
- (c) a fee prescribed under section 97 (2) (k) [regulations in relation to fees];*

From the evidence before me I find that rent owed includes parking. There was no dispute that the tenancy agreement included rent and the cost of parking, for a total of rent owed.

From the evidence before me it appears that the tenant has been issued past rent increases that were in the approved form. Those increases included the cost of parking, commencing with the first increase given in 2001. From the evidence before me I find that there is no doubt that the tenant has used a second parking space for a number of years.

When the previous manager allowed the tenant to use a second parking space I find that the parties created a separate parking agreement. Section 7(1)(g) of the 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.

(Emphasis added)

I find, on the balance of probabilities that the tenant was provided with a single parking space at the start of the tenancy and that the use of the second parking space was made by agreement, outside of the tenancy agreement terms.

As a second parking space was not required to be provided under the tenancy agreement I find that the tenant and landlord had entered into a separate agreement for the provision of another parking space as a service.

Therefore, if the landlord wishes to terminate the parking service for the second space I find that the landlord must issue notice, in accordance with section 27 of the Act, which provides:

Terminating or restricting services or facilities

27 (1) *A landlord must not terminate or restrict a service or facility if*

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) *A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord*

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) 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 of the service or facility.

A second parking space is not an essential service as parking may be purchased elsewhere. A second parking space is not a term of the tenancy agreement. Therefore, the landlord may issue 30 days written notice, removing use of the second parking space, in the approved form.

I find that the tenant may continue using the second parking space until such time as notice in the approved form has been given and comes into effect.

Conclusion

The second parking space is a service provided and notice in the approved form must be issued if that service is to be removed.

Parking for a single parking space is included with rent.

The landlord may issue notice terminating the service of the second parking space and until such time the tenant is at liberty to use the second parking space.

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: May 06, 2016

Residential Tenancy Branch