



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application, pursuant to section 72.

The individual landlord, CA ("landlord") and the tenant, SM ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had authority to speak on behalf of the landlord company named in this application as an agent at this hearing (collectively "landlords"). The tenant confirmed that he had authority to speak on behalf of "tenant TM," the other tenant named in this application, as an agent at this hearing (collectively "tenants"). This hearing lasted approximately 73 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenants' application.

The landlord stated that she sent written evidence to the tenants on August 2, 2016, which I received at the Residential Tenancy Branch ("RTB"). The tenant said that he received a delivery notice on August 8, 2016, but he had not received the evidence. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlords' written evidence on August 7, 2016. However, as the landlords' written evidence was not deemed received by the tenants at least 7 days prior to the hearing, contrary to Rule 3.15 of the *RTB Rules of Procedure*, and the tenants had not received, reviewed or had a chance to respond to it, I advised both parties that I could not consider it at this hearing or in my decision.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to add the landlord company as a landlord-respondent party. The landlord consented to this amendment request by the tenant. The landlord confirmed that the landlord company was the true landlord for this tenancy and that the tenants pay rent to this company.

At the outset of this hearing, the landlord confirmed that she agreed that the RTB had jurisdiction to hear this matter. Accordingly, I proceeded with the hearing, as neither party raised any jurisdictional arguments and I found that I had jurisdiction to hear this matter.

Issues to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order to allow them to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the tenants' documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on July 1, 2010. Monthly rent in the current amount of \$1,582.00 is payable on the first day of each month. A security deposit of \$700.00 was paid by the tenants and the landlords continue to retain this deposit. The tenants continue to reside in the rental unit. No written tenancy agreement exists for this tenancy. The tenants sublet the rental unit from the landlords. The landlords have their own rental agreement with the owner of the rental unit.

The tenants seek a monetary order of \$800.00 plus the \$100.00 filing fee paid for this application. The tenants also seek a rent reduction of \$100.00 per month for the remainder of this tenancy.

The tenants stated that they are entitled to one underground parking spot included in their monthly rent, as part of their tenancy agreement with the landlords. The tenants provided a copy of the landlords' original rental advertisement, which they responded to, before renting the unit. The tenants explained that the landlords had paid for their parking since the beginning of their tenancy on July 1, 2010 but suddenly discontinued the payments when the parking fees increased from \$25.00 to \$100.00 per month. The tenants stated it is the landlords' responsibility to pay for same. The tenants provided a copy of a letter, dated March 15, 2016,

that was sent to the landlords, stating that the landlords were not permitted to restrict or terminate the tenants' parking as it was a material term of the tenancy agreement.

The tenants seek a reimbursement of parking fees paid to the building management company in addition to rent, of \$100.00 per month from January to March 2016, totalling \$300.00. The tenants seek compensation of \$100.00 per month from April to August 2016, totalling \$500.00, for the inability to park in the underground parking spot at the rental unit. The tenants said that they were unable to afford the \$100.00 monthly parking charge from April to August 2016, so they were forced to find free parking on the surrounding streets. The tenants also seek a rent reduction of \$100.00 per month for the remainder of this tenancy, if they are unable to use the underground parking spot at the rental unit.

The landlords agreed that they paid \$25.00 per month for the tenants' parking, since the beginning of this tenancy on July 1, 2010 until September 2015. The landlords stated that they only paid for parking as a courtesy, in the event that they required parking when the sublease agreement was over with the tenants. The landlords indicated that they do not own the parking spot, only the management company does. The landlords said that they did not know the tenants were using the parking spot and that it is not essential to their tenancy agreement. The landlords explained that the parking was suddenly increased to a total of \$100.00 per month as of September 2015, and that they had no control over this increase. The landlords maintained that they paid this increase for four months from September to December 2015, as a courtesy to provide the tenants with time to absorb the change. The landlords said that they provided notice to the tenants regarding the increased parking costs and advised them that they were required to deal directly with the management company for parking. The landlords stated that the parking costs are too high and they already pay for maintenance costs and assessment fees, which are not passed on to the tenants.

Analysis

I find that the landlords are responsible to pay for the tenants' underground parking spot because it was advertised as part of the tenants' rent prior to this tenancy beginning. The tenants provided proof of the landlords' advertisement for rent, which clearly states that "secure parking" is included. No extra parking fee is indicated in addition to the rent in the advertisement. Even though no written tenancy agreement exists, the tenants have been provided with a parking spot paid for by the landlords since the beginning of this tenancy on July 1, 2010 until December 2015, a period of almost 5.5 years. Therefore, the landlords have waived their right to claim that parking is not included in the tenants' rent.

Accordingly, I award the tenants \$300.00 for parking fees paid from January to March 2016. The tenants provided receipts for the above total amount paid.

I further award the tenants a past rent reduction of \$25.00 per month from April to August 2016, totalling \$125.00, for the inability to park in the parking spot during the above time period and for

having to find alternative parking. I find that the tenants lost the value of \$25.00 per month from the tenancy agreement, for the loss of this parking spot. This was the amount that the landlords originally paid on behalf of the tenants for parking in July 2010, when the parties entered into the tenancy agreement.

I dismiss the tenants' claim for a future rent reduction of \$100.00 per month from September 2016 until the end of this tenancy, with leave to reapply. I find that the tenants' application is premature. As it is unclear whether the landlords will pay for the parking spot on behalf of the tenants or issue a written notice in the approved form to the tenants to terminate or restrict the parking and provide a rent reduction to the tenants, I cannot determine whether a rent reduction is required at this time.

As the tenants were mainly successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

I order the tenants to deduct \$525.00 from future rent payable to the landlords at the rental unit, in full satisfaction of the monetary award made at this hearing.

The tenants' application for a future rent reduction from September 2016 until the end of this tenancy, is dismissed with leave to reapply.

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: August 31, 2016

Residential Tenancy Branch