



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Reliance Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) Orders as follows:

1. An Order in relation to a rent increase - Section 43;
2. An Order for the Landlord’s compliance - Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

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

Can the parking fee be increased?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

Although the Tenant lived in other units within the same building starting in 1992 the tenancy for the current unit started in 2002. Neither Party has a written tenancy agreement for this unit and tenancy start date. Both Parties only have an application to rent for a previous tenancy that started in 1992. The Landlord provided a copy of residential parking agreement dated September 3, 2014 and I note it is signed by both the Landlord and Tenants. This agreement indicates that for a sum of \$35.00 starting on December 1, 2014 and as part of the monthly rent the Tenant is provided with

parking stall #23. This agreement also provides that the Tenant will pay rent as set out in the Residential Tenancy Agreement.

The Tenant states that the original rent of \$1,005.00 for this unit included parking, hydro and heat and that this rent is payable on the first day of each month. The Tenant states that the rent has always been paid as one lump sum each month for the duration of the tenancy. The Tenant states that units in the building are also always advertised as having parking included with the rent. The Tenant submits that the Landlord has raised the parking rate as of September 1, 2016 to \$75.00 and disputes that the Landlord may increase the parking separate from the rent.

The Landlord submits that the parking fee has been increased separately from the rent as the parking agreement is separate from the tenancy agreement. The Landlord has no evidence of any other agreements or terms in relation to parking.

Analysis

Section 6 of the Act provides that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. Given the undisputed evidence that no written tenancy agreement exists I accept the Tenant's undisputed evidence of the oral terms of the tenancy agreement. Although the parking agreement is separate from the oral agreement, I consider that the parking agreement is separate to deal with the details of the parking itself and does not separate the parking fee from the rent or the terms of the rent payment. As the parking agreement clearly includes the parking fee as part of the rent I find that the Landlord may not increase that portion independent of a rent increase and any attempt to raise this portion has no effect. As the Tenant's application has been successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable.

Conclusion

The Landlord may not raise the parking portion of the rent independent of a rent increase made in accordance with the Act.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: October 20, 2016

Residential Tenancy Branch

