Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, OLC, FF

Introduction

The tenants have been paying $25.00 a month for their parking spot for over twenty years. The landlord has now raised it to $75.00. The tenants consider this to be an unlawful rent increase under the *Residential Tenancy Act* (the '*Act*") and apply to challenge it.

All parties attended the hearing, the landlord by its representative Ms. E.F., and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the parking charge was "rent" and subject to the rent increase limitations imposed by the *Act*?

Background and Evidence

The rental unit is a one bedroom apartment in a fifteen storey, 58 unit apartment building.

The tenants moved into the building in 1988 and into their present unit in 1991.

There is a form of tenancy agreement entitled "Application for Rent of Suite." Though it is only an application, by its terms if the landlord did not return the deposit within three days the application was deemed to be accepted. Thus it is a contract. It provides that the tenants will pay a monthly rental of $750.00 (nowadays, after increases: $980.00) "plus $25.00 for parking."

There have been a number of rent increases over the years; eight since 2004. They were all imposed in accordance with restrictions set by the *Act*. The percentage calculations for the increases were all based on the rent. The parking charge remained separate and was not increased.

In August 2014 the landlord sent the tenants a "legal bulletin" regarding the disclosure and protection of personal information, along with a "parking form." An accompanying letter asked the tenants to fill in the details about their vehicle and to "[p]lease initial or sign the other areas that you are comfortable with filling out."

The tenant Ms. C.K. testifies that the parking form was a "Residential Parking Agreement." She included a blank agreement in her materials. The document states that the landlord is leasing a parking space for $25.00 per month and that "[o]ne (1) calendar month notice will be issued by the LANDLORD to the TENANT for any parking stall rent adjustments. The TENANT agrees to provide one (1) clear calendar month notice to terminate use of the parking stall."

Ms. C.K. says she and Mr. S.E. filled it out thinking it was only a request for details about their automobile. They did not think it was a new parking contract or that it changed the *status quo*.

The landlord produced the completed copy of the Residential Parking Agreement. It is "agreed and signed" by both tenants and a representative of the landlord. It is dated March 11, 2014, well before the landlord's August letter.

In June 2016, the respondent landlord acquired the building and sent the tenants a letter introducing itself saying that it focuses on developing long-term tenant relationships.

In July the landlord sent the tenants a letter increasing the parking from $25.00 per month to $75.00.

The landlord's representative gave the opinion that $75.00 per month was a very reasonable charge. The tenants did not agree.

Analysis

Much of the argument in this matter centred around whether or not "parking was included in rent." In order to properly understand the law that must be applied to the facts of this dispute, it is necessary to set out the relevant provisions of the *Act*.

Part 3 of the *Act* regulates the raising of rent during a tenancy. Section 41 of that Part provides that a landlord must not increase rent except in accordance with Part 3.

The *Act* defines what "rent" is:

> **"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]*;

(*emphasis added*)

A “service or facility” is also defined in the *Act*:

> **"service or facility"** includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:
> (a) appliances and furnishings;
> (b) utilities and related services;
> (c) cleaning and maintenance services;
> (d) **parking spaces** and related facilities;
> (e) cablevision facilities;
> (f) laundry facilities;
> (g) storage facilities;
> (h) elevator;
> (i) common recreational facilities;
> (j) intercom systems;
> (k) garbage facilities and related services;
> (l) heating facilities or services;
> (m) housekeeping services;
>
> (*emphasis added*)

Parking spaces are, by definition, a “service or facility.”

It follows from the definitions of “rent” and “service or facility” that money paid for a parking space is rent. The fact that the 1991 tenancy agreement sets out an amount for rent and a second amount for parking does not change the fact that the money being paid for parking was also rent by virtue the definitions.

And so, given the wording in the *Act*, it is not the right question to ask whether “parking was included in rent.” The money being paid for parking under the 1991 tenancy agreement was rent, unless it was a fee prescribed under s. 97(1)(k) of the *Act*. Such a fee is excluded from the definition of “rent.”

Section 97(1)(k) authorizes the director to make regulations respecting refundable and non-refundable fees that a landlord may or may not impose on a tenant and limiting the amount of a fee that may be imposed.

Such a regulation has been made. Section 7 of the Residential Tenancy Regulation provides:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

(a) direct cost of replacing keys or other access devices;

(b) direct cost of additional keys or other access devices requested by the tenant;

(c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;

(d) subject to subsection (2), an administration fee of not more than $25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(e) subject to subsection (2), a fee that does not exceed the greater of $15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;

(f) a move-in or move-out fee charged by a strata corporation to the landlord;

(g) 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.

Subsection 7(1)(g) is the only subsection of the Regulation that might apply to the circumstances of this dispute. It allows a landlord to charge a non-refundable fee for "services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement."

I find that the money or "fee" charged for parking under the 1991 tenancy agreement was not excluded by s. 7(1) because parking was required to be provided under the tenancy agreement.

Does the Residential Parking Agreement signed by the parties in March 2014 change that result?

The tenants position is that they were misled into signing that agreement by the cover letter from the landlord indicating that what the landlord really wanted by the agreement was the details of the tenants' car, for security or similar purposes. I do not accept that argument. The tenants signed the agreement and are taken to have read it before they did. They must bear the consequences. As well, it is apparent that they signed the agreement months before they received the cover letter in question.

I find that the Residential Parking Agreement changed the legal rights between the parties. The subject of that agreement was still parking; namely a "service or facility," and money paid for it still came within the definition of "rent" in the *Act*. However, the parking arrangement between the partied became a separate agreement replacing the terms of the 1991 tenancy agreement relating to parking.

Parking ceased to be a service or facility "provided under the tenancy agreement" and became a service or facility required to be provided under the new Residential Parking Agreement. It thereby fell under the exclusion provisions of s. 7(1)(g) of the Regulation and money paid for parking was no longer "rent."

The Residential Parking Agreement purports to permit the landlord to "adjust" the parking charge with a month's notice. As the parking charge the tenants now pay is not rent, the landlord is free to "adjust" the parking charge and it is not limited in doing so by the rules in Part 3 of the *Act* relating to rent increases.

Whether or not the demanded increase to the parking fee, or "parking stall rent" as the agreement refers to it, is a fair or a reasonable increase is not a question that the *Act* permits an arbitrator to decide.

During the hearing the landlord's representative provided the Residential Tenancy Branch file numbers of four other disputes involving contested parking fee increases imposed the same landlord. They are cited on the cover page of this decision.

Section 64(2) of the *Act* states that the director (and thus arbitrators appointed by her) is not bound to follow other decisions. Nevertheless, it is important that the law be so far as possible intelligible, clear and predicable so that a landlord or a tenant, before committing to any course of action, should be able to know in advance what are the legal principles which flow from it. A decision based on similar facts should be given consideration and credence.

In dispute #1the decision was rendered October 17, 2016. There the arbitrator decided the landlord could impose a parking fee increase, determining that the tenant had not provided a tenancy agreement that supported the claim that parking was included with her monthly rental fee. In this case the tenants have provided such an agreement but it was replaced by the specific agreement regarding parking. I find that case to be distinguishable on its facts.

In disputes #2 and #3 decisions have not been rendered yet.

In dispute #4 the dispute appears to have been resolved between the parties and no decision or analysis was made.

A fifth decision exists, also cited on the cover page of this decision, dated October 20, 2016, involving a parking charge increase imposed by the same landlord. In that case there was no written tenancy agreement but there was a parking agreement. It was determined that the parking agreement clearly included the parking fee as part of the rent. That is a significant distinguishing fact from this dispute. I find that decision was not based on the same or similar facts and therefore of little assistance.

The tenants referred to two previous decisions regarding parking fees. Unfortunately they did not provide copies of the decisions nor did they have any details such as file numbers, complete party names or arbitrator names that would permit the locating of those decisions. The two decisions have therefore not been considered.

Conclusion

The tenants' application is dismissed. In the circumstances of this dispute, the landlord's imposing of a parking fee increase was not a rent increase subject to the rules laid down by 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: October 22, 2016

Residential Tenancy Branch