



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, O

Introduction

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

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- other unspecified remedies

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The parties acknowledged receipt of evidence submitted by the other.

Issue to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to "other" remedy?

Background, Evidence

The tenant's testimony is as follows. The tenancy began "about seventeen years ago" by way of verbal agreement and is presently on a "month to month" basis. The tenant is obligated to pay \$462.00 per month in rent in advance. The tenant testified that she has always had parking and a storage locker included as part of her tenancy agreement and as part of her monthly payment. The tenant testified that the landlord is seeking to charge her \$20.00 per month for the storage locker and \$20.00 per month for the parking spot. The tenant testified that it is unfair of the landlords to impose a charge for something that she has always had. The tenant testified that in the alternative, if the landlords take away her parking and storage locker; her rent she be reduced to reflect

the loss of services or facilities. The tenant testified she wants to keep the storage locker and parking spot.

The landlords gave the following testimony. SK testified that there are only 14 parking spots for this 55 unit complex. SK testified that other tenants are paying the same rent as the subject tenant without the benefit of parking spot. JR testified that an offer was made to the subject tenant to sign a three year lease which would include the storage locker and parking spot at no additional cost. JR testified that the tenant can easily afford the amount as she drives a BMW. JR testified that the landlords are trying to exercise good management of the building by seeking the parking and storage costs.

Analysis

While I have turned my mind to all the 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 tenant's claim and my findings around each are set out below.

Both parties agreed that the tenant has always had the parking spot and storage locker included as part of her rent payment. The landlords now seek to impose a fee for both unless the tenant agrees to sign a three year fixed term agreement which would include the parking spot and storage locker at no additional cost.

After considering the testimony of both parties, and considering the matter before me, I find that express waiver applies under these circumstances. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. The landlords concede that the tenant was given the parking spot and storage locker right from the outset of her tenancy and as part of her tenancy agreement.

The landlords cannot now seek after seventeen years to reclaim the parking spot and storage locker based on a shortage of amenities without reducing the rent to reflect the loss of service or facility; additionally, the landlord cannot impose a fee when those items have always been included with her rent. Even though no written tenancy agreement exists, the tenant has been provided with a parking spot and storage locker by the landlords since the beginning of this tenancy seventeen years ago. Therefore, the landlords have waived their right to claim that parking is not included in the tenants' rent.

Based on the above, I find that the tenant is entitled to continue to use the parking spot and storage locker without paying an additional cost as per the original terms of her tenancy agreement.

Conclusion

The tenant has been successful in her application. The tenant is entitled to continue to use the parking spot and storage locker at no additional cost.

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: April 20, 2017

Residential Tenancy Branch