



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MHALTY HOLDINGS ULC
and [tenant name to protect privacy]

DECISION

Codes O

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for “other” relief under the Act, Regulation or tenancy agreement.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue to be Decided

Is the landlord entitled to “other” relief sought?

Background and Evidence

The tenancy began on January 15, 2005. Rent in the amount of \$2,300.00 was payable at the start of the tenancy. Rent has been increased in accordance with the Act during the tenancy.

The landlord testified that the tenants parking fee of \$25.00 per vehicles has always been paid in addition to the rent. The landlord stated that each time the rent was increase the parking fee was not.

The landlord testified that in 2009 and 2010 the tenants paid \$50.00 per vehicle; however, after negotiation they lowered the parking fee back to \$25.00 per vehicle.

The landlord testified that they had given the tenants a very modest parking increase of \$10.00; however, the tenants have now stopped paying the parking fee and claiming it was an overpayment of rent for the past 12 years.

The tenants testified that they believe that they have been paying an additional parking fee for the past twelve years as the box is ticked off as being included in the rent and this went unnoticed. The tenants stated they stopped paying the parking fee until this matter was settled.

The tenants acknowledged that the parking fee has not been subject to the rent increases, which they have received during their tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Act defines “services and facilities” to include parking spaces. At issue is whether the landlord may increase the amount charged for parking and if so, the manner in which this may be accomplished.

The difficulty or complication regarding amounts that may be charged for parking arises because the Act defines “rent” to include money payable for services and facilities and whereas the Act and the Regulations also provide that a “fee” may be charged for a service or facility. “Rent” is subject to rent increase limitations in Part 3 of the Act and fees are not subject to Part 3 of the Act.

In this case, the tenants have been paying the parking fee, in addition to their rent. I find it would make no sense for the tenants to have been paying a parking fee for 12 years, if that was not the intent of the agreement. I find the landlord had the rights to reply upon the actions of the tenants.

Further, the parties agreed that the parking fee has not been subject to any of the rent increases over the past 12 years, which if the parking fee was “rent” as defined, it would have been subject to the rent increases as set out in Part 3 of the Act, which is was not.

I find that the parking payable is a “fee” and is not subject to Part 3 of the Act. The landlord is entitled to increase the fee for parking to the amount that they have determined is appropriate. Should the tenants not want to pay the parking fee they can return the parking spaces back to the landlord.

Conclusion

The landlord’s application for other relief sought has been granted.

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: May 23, 2017

Residential Tenancy Branch