



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROTHERS AGENCIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC,

Introduction

On June 19, 2017, the Tenant made an Application for Dispute Resolution to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 16, 2017.

The matter was set for a conference call hearing. The Tenant and Landlord attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the 10 Day Notice dated February 10, 2017, be cancelled?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The parties testified that the tenancy began on December 1, 2015, as a month to month tenancy. The tenancy agreement indicates that the Tenant will pay the rent of \$910.00 monthly plus parking of \$15.00 for a total of \$925.00, to the Landlord on the first day of the rental period.

The Landlord and Tenant testified that the agreement provides the Tenant with the entitlement to park his vehicle on the property. The Tenant was not assigned a specific parking spot, but was entitled to park in any open spot in the designated parking area.

The Landlord testified that rent increases for parking were issued to some residents of the rental property; increasing the monthly amount to \$25.00 per month. The Landlord submitted that the owner is considering using the funds for improvements to the rental property.

The Landlord submitted that he received conflicting information from the Residential Tenancy Branch and counsel on whether the Landlord can unilaterally increase the parking fee, or whether it amounts to an illegal rent increase under the *Residential Tenancy Act* ("the Act"). The Landlord submitted that the legislation is unclear and upon advice of counsel, the Landlord increased the monthly parking fee.

The Landlord submitted that after four months of not receiving the parking fee increase, they issued the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 16, 2017, ("the Notice").

The Notice states that the Tenant has failed to pay a \$10.00 parking increase and the Tenant has failed to pay the amount of \$40.00. The Landlord clarified that the Tenant has failed to pay the \$10.00 increase for four months. The Landlord clarified that a letter of demand for payment of the \$40.00 was never issued to the Tenant. The Landlord testified that he does not want to end the tenancy of the Tenant, but wanted to proceed to Dispute Resolution to receive a Decision on the matter.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant disputed the Notice on June 19, 2017 within the required time frame.

The Landlord submitted that because most Tenants have vehicles and require parking the Landlord structures their tenancy agreements for rent and parking to avoid issues of non-payment of parking fees.

The Landlord submitted that parking is at the request of a resident and that a resident can withdraw their need for a parking spot at any time at the discretion of the resident. The Landlord submitted that they treat parking as a separate service from rent.

In response, the Tenant submitted that he signed a legal and binding tenancy agreement with the Landlord and the agreement does not state that the fee for parking can be increased. The Tenant submitted that if the parties reached an agreement on an increase, then the amount could change; however, the Landlord cannot increase the parking fee unilaterally.

The Tenant submitted that he does not believe that the owner of the property is increasing the fees in order to spend more money improving the property. The Tenant submitted that some residents do not pay for parking because their tenancy agreement includes parking in the rent.

Analysis

Section 14 of the Act states that a tenancy agreement may not be amended to change or remove a standard term unless both the Landlord and Tenant agree to the amendment. The requirement for an agreement does not apply to a rent increase in accordance with Part 3 of the Act.

Section 46 (6) of the Act states if utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

The parties entered into an agreement on November 1, 2015, that the tenancy will commence on December 1, 2015, and the Tenant is required to pay rent in the amount of \$910.00 plus parking in the amount of \$15.00 for a total of \$925.00.

I have considered the Landlord's submission that parking is a separate service and that a Tenant can withdraw their need for a parking spot at any time at their discretion. I find that parking is a significant term of the parties agreement. I find that the tenancy agreement is structured in such a manner to make parking a standard term of this agreement. The agreement separates the amount of rent from the amount of parking. The agreement does not state total rent, it states total. I find that the parking fee is not rent, and I find that the agreement to provide a parking spot is a significant term of the agreement. I find that due to the structure of the agreement, the Landlord cannot unilaterally change the provision of the parking spot or the monthly fee for parking.

My rationale for my finding includes consideration that if the Landlord was permitted to change the amount of the monthly parking fee, the Landlord could unilaterally raise the amount for the monthly parking to any amount. I find that permitting a Landlord to

change a significant term of an agreement, such as raising the fee for parking to an arbitrary amount, would breach the agreement and be unfair to the Tenant.

I acknowledge the Landlord's submission that a Tenant can withdraw their need for a parking spot at their discretion. Based on the agreement before me, and pursuant to section 14 of the Act, the Landlord is at liberty to allow a Tenant to cancel a parking spot if both parties are in agreement. If the Landlord agrees to such, I recognize that the Landlord could then offer that parking to another resident with new terms.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 16, 2017, is set aside. I find that the Tenant does not owe the Landlord \$40.00 for parking or rent.

The tenancy will continue until ended in accordance with the Act.

Conclusion

I find that the Tenant does not owe the Landlord \$40.00 for parking or rent.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 16, 2017, is set aside.

The tenancy will continue until ended in accordance with 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: August 25, 2017

Residential Tenancy Branch