



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, FF

Introduction

This hearing was convened in response to an application by the Tenant to dispute a parking fee increase and to claim recovery of the filing fee pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Procedural Matter

During the hearing the Landlord objected to any clarification of its evidence, objected to some of its evidence being found irrelevant and called the Arbitrator biased asking the Arbitrator to remove herself. The Landlord was asked to clarify the basis for the claim of bias and the Landlord stated that he was only stating facts. The Landlord was informed that the relevance of certain evidence from the Landlord was not clear and hence the need to clarify that evidence. The Landlord also stated that should the Tenant be successful with its application the Landlord will exercise its right and will thereafter give the Tenant the full rental increases allowed.

Section 7.17 of the RTB Rules of Procedure provides that the Arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence. No reasons were provided for the Landlord's belief of bias. It was apparent that the Landlord was angry with the Tenant's application and I found the Landlord's statements

to the Tenant and the Arbitrator to be beyond the provision of evidence and without any basis for bias. The Landlord was cautioned against making any further disrespectful or inflammatory comments. Given the lack of any basis for the claim of bias I declined to remove myself from the proceedings.

It is also noted that the Landlord left the hearing prior to its completion and the hearing continued without the Landlord for a further 10 minutes. During that time the Tenant gave further evidence that I can only consider undisputed by the Landlord. The Tenant states that while the Landlord states that they have been good Landlords, the Tenant has also been a good Tenant. The Tenant states that this is the first dispute with the Landlord and that the Tenant is concerned about possible retaliation as a result of the Tenant pursuing its rights under the Act.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Given that the Landlord presented as extremely difficult and entitled, I accept that the Tenant's evidence of fear of retaliation. As a result, should the Landlord act in a manner that breaches the Tenant's rights under the tenancy agreement or the Act as a result of this application the Tenant has leave to reapply for compensation.

Issue(s) to be Decided

Can the Landlord increase the parking payment independent of the rent increase provisions under the Act?

Is the Tenant entitled to recovery of parking payments increased independently of the rent increase provisions under the Act?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy started under written agreement on February 15, 2006. The agreement provides that rent of "960.00 +\$30 parking" (reproduced as written) is payable on the first day of each month. The following section setting out services and facilities that are included in the rent does not select parking as one of those services or facilities. The tenancy agreement references an addendum that is not relevant to the dispute. Since the onset of the tenancy the Landlord has increased the rent without including the parking amount. The parking amount was increased to \$50.00 as of July 1, 2017.

The Landlord states that the parking was increased due to renovation costs to the parking area. The Landlord states that if the renovations had not been done, the parking lot may not have been useable and no parking could have been provided to the Tenant. The Landlord states that he is unsure whether the tenancy agreement allows the Landlord to arbitrarily remove parking. The Landlord argues that the parking fee is not part of the rent as the security deposit was calculated without including the parking fee. The Landlord argues that the parking fee is not part of the rent as this amount was not included in the rental increases given over the period of the tenancy. The Landlord provides a document setting out the amount of rental increase given each year and confirms that the amounts have been less than allowed under the Act. The Landlord states that there are two parking areas: one underground and one outside. The Landlord states that all of the tenants in the building were given the same increase and none other than the Tenant has disputed the increased amount. The Landlord states that none of the tenants in the underground parking have disputed the parking fee of \$50.00.

The Tenant argues that the parking amount is part of the rent as it is payable with and at the same time as the rent is payable. The Tenant states that the tenants who have underground parking did not have any parking increases and that only the tenants who parked outside were given the increase. The Tenant states that the notice of the

parking increase came in May 2017. The Tenant states that she wrote a letter to the Landlord informing the Landlord that the parking increase was unreasonable and attaching a previous decision of the RTB that found that parking was included in the rent and could not be raised independently of the rent. The Tenant requested the rescission of the increase. The Tenant states that the Landlord only responded to this letter by sending another copy of the notice of parking increase. The Tenant states that she has paid the increased amount pending the outcome of the application and claims the return of \$60.00 should the Landlord not be entitled to the increase.

Analysis

The Act defines “Rent” as money paid to a landlord in return for the right to possess a rental unit and for services or facilities. A “service or facility” includes parking where it is provided or agreed to be provided by the landlord to a tenant of a rental unit. Section 7 of the Residential Tenancy Regulations provides that a landlord may charge 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. The tenancy agreement provides that the parking amount is part of the rent payable on the first day of each month. The tenancy agreement does not include parking in the section of the agreement that sets out what services and facilities are included in the rent. I find the omission of parking as a service or facility to be a contradiction with the inclusion of parking costs with the rent payable. As the Landlord “held the pen” and is therefore responsible for ensuring consistency in the terms of the tenancy agreement I resolve this contradiction in favour of the Tenant and find that parking is a service and facility to be provided with the rent. As the Landlord may not charge a fee for parking where it is required to be provided under the tenancy agreement, I consider the additional parking amount of \$30.00 to be part of the rent and find this amount may not be increased independent of the allowable rental increases. I consider the Landlord’s failure to previously include the parking portion monies in the rent increase calculations to be of little weight or relevance in making this finding.

As the Tenant paid an extra **\$60.00** without the Landlord having the right to charge this amount under the tenancy agreement I find that the Tenant is entitled to its return. As the Tenant's application has been successful I find that the Tenant is also entitled to recovery of the \$100.00 filing fee for a total entitlement of **\$160.00**. The Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

The Landlord may not increase the parking portion of the rent independent of the rent.

I grant the Tenant an order under Section 67 of the Act for **\$160.00**. 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: September 15, 2017

Residential Tenancy Branch