



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gateway Property Management Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

O, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied to recover the fee for filing this Application for Dispute Resolution and for “other”.

The Tenant stated that on August 31, 2017 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted with the Application were sent to the Landlord’s business address, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On November 07, 2017 the Landlord submitted 21 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord #1 stated that this evidence was served to the Tenant, via registered mail, on November 03, 2017. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided:

Is the Landlord entitled to increase the parking fee?

Background and Evidence:

The Landlord and the Tenant agree that:

- this tenancy began on March 01, 2017;
- the parties signed a tenancy agreement for a fixed term, which runs from March 01, 2017 to February 28, 2018;

- in this tenancy agreement the Tenant agreed to pay rent of \$780.00 and a monthly parking fee of \$25.00;
- the Landlord posted a notice in July of 2017 which informed tenants that the parking fee would be increased to \$40.00, effective September 01, 2017; and
- the Landlord sent the Tenant an email confirming that the parking increase would apply to the Landlord on September 01, 2017.

The Tenant submits that she has a fixed term contract and that the terms of that contract, including the amount of the parking fee, cannot be change until the end of the fixed term.

The Landlord submits that the Landlord has the right to increase parking fees at any time during the year because those fees are not subject to the rent restrictions imposed by the *Act*. The Agent for the Landlord #1 stated that the Landlord has made various improvements to the parking area and that the moderate fee increase reflects those improvements.

The Tenant applied for a refund of the parking fee increase she paid for September, which was \$15.00. At the hearing she applied to amend the amount of her claim to include the parking fee increase she paid for October and November of 2017, in the amount of \$30.00. The Landlord does not dispute that the Tenant paid parking fee increase of \$45.00.

Analysis:

Section 1 of the *Residential Tenancy Act (Act)* defines “rent” as 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 a security deposit, a pet damage deposit, or a fee prescribed under section 97 (2) (k) of the *Act*. The definition of “services and facilities” in the *Act* includes parking.

I find that when parking is provided as a service with the tenancy and there is not a separate charge for parking, any payment made for parking is to be considered rent.

I find that parking was not included in the rent in this tenancy. Rather, I find that the Tenant agreed to pay \$780.00 for rent and that the Tenant agreed to pay a subsequent \$25.00 fee for parking. This conclusion is based on the tenancy agreement that was submitted in evidence, which clearly establishes that there is one payment for rent and

one payment for parking.

Part 3 of the *Act* establishes how and when rent can be increased. As parking was not included in the rent, I find that Part 3 does not apply to any attempt to increase the parking fee.

Section 14(2) of the *Act* stipulates that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment. As there is no evidence that the parties agreed to amend the term of the tenancy agreement that relates to the parking fee, I find that the Landlord does not have the right to increase the parking fee at this time.

Section 14(3) of the *Act* stipulates that the requirement for agreement under section 14(2) of the *Act* does not apply to a rent increase in accordance with Part 3 of the *Act*; a withdrawal of, or a restriction on, a service or facility in accordance with section 27 of the *Act*; or a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

I note that section 14(3) of the *Act* authorizes a Landlord to withdraw parking services, in certain circumstances, providing that withdrawal complies with section 27 of the *Act*. I specifically note this section only to alert the parties that the Landlord may have the right to withdraw parking services if the parties do not come to an agreement regarding parking fees.

I note that section 64(1) of the *Act* stipulates that I am not bound to follow decisions made by other Residential Tenancy Branch Arbitrators. This section of the *Act* requires me to base my decision on the merits of the case as disclosed by the evidence admitted. This decision is based on the unique circumstances of this tenancy and on my interpretation of the legislation, and is not based on previous decisions that were submitted in evidence by the Landlord.

I find that it was reasonable for the Landlord to conclude that the Tenant would be seeking to recover all of the parking fee increases she paid, including fees that were paid since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all of the parking fee increases that were paid.

As I have found that the Landlord does not have the right to increase parking fees, I grant her application to recover the \$45.00 in increased fees that she has paid for

September, October, and November of 2017.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$145.00. The Tenant indicated that she would like to recover this claim by reducing it from her monthly rent payment. I therefore authorize the Tenant to reduce one monthly rent payment by \$145.00 in full satisfaction of this monetary claim.

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: November 16, 2017

Residential Tenancy Branch