Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ITZIAR MANAGEMENT LTD. 549289 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, FFT

Introduction

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

- dispute a rent increase that is above the amount allowed by law, pursuant to section 43 of the *Act*; and
- to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord's agent (the "landlord") appeared at the hearing. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served with the notice of dispute resolution package, including the tenant's evidence, by way of registered mail on November 22, 2018. The landlord confirmed receipt of the notice of dispute resolution and evidence and agreed that the package was received within the timelines as prescribed in the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Does the landlord's increase in charges for services such as parking, and an implementation of a fee for storage, constitute a rent increase in violation of the *Act*? Is the tenant entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the sworn testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

The parties agreed that the tenancy began on September 01, 2015, and that the agreed-upon monthly rent owed by the tenant at the onset of the tenancy was $975.00, and was due on the first day of each month. The tenant provided a security deposit in the amount of $487.50, which continues to be held by the landlord. The tenant entered into evidence a copy of a tenancy agreement which confirms the information provided by the parties.

The parties confirmed that the tenancy currently continues on a month-to-month basis, and that the current monthly rent is $1,101.00.

The tenant testified that the substantive issue of his application is to dispute the landlord's decision to implement an increase for the fees associated with parking, and to introduce a fee for storage, for which there was no prior fee. The landlord entered into evidence a document dated October 10, 2018, in which the landlord outlines that the fee for covered parking will increase from $20.00 to $50.00, the fee for uncovered parking will increase from $15.00 to $35.00, and that a fee of $35.00 for storage, for which there is not currently a fee, will be implemented.

The tenant asserted that such fees constitute a rent increase which does not adhere to the criteria for rent increases as set out under the *Act*. The tenant asserted that the services such as parking and storage are not services provided subsequent to a separate agreement with the landlord; rather, the tenant conveyed that the parking and storage services fall under services which he understood to be included as part of the provisions of the tenancy agreement.

As such, the tenant's position is that since parking and storage are services and facilities which are required to be provided under the tenancy agreement, that the definition of "rent", as defined under section 1 of the *Act,* would imply that the monthly payment of rent accepted by the landlord under the tenancy agreement would enable the tenant the right to possess the rental unit and to access and use services and facilities provided under the agreement, which, in this case, would include parking and storage facilities.

The tenant referenced the tenancy agreement and outlined that item #6 of the agreement, under the heading “rent and fees”, depicts that a monthly rent of $975.00 and a parking fee of $20.00, are indicated, which constitute a total monthly payment of $995.00 due each month under the agreement.

The tenant asserted that the inclusion of the parking service on the tenancy agreement implies that the parties agreed that the parking service forms part of the agreement, and as such, is not covered by a separate and distinct agreement for the parking service. The tenant testified that he did not request that the parking service be provided as a provision apart from the tenancy agreement, and that no separate agreement exists between the parties with respect to the parking service.

The tenant asserted that the storage facility was understood between the parties to be a part of the tenancy agreement. The tenant testified that he did not request that the storage service be provided as a provision apart from the tenancy agreement, and that no separate agreement exists between the parties with respect to the storage service.

The tenant testified that since the beginning of the tenancy, he had always had access and exclusive use of the storage locker, and that he was permitted to place his own lock on the storage locker, which further affirmed his understanding that the storage locker was for his exclusive use under the tenancy agreement.

The tenant submitted that apart from the monthly rent provided, a separate fee was never requested by the landlord for use of the storage facility since the onset of the tenancy agreement, and that having such a lengthy period of time elapse since the beginning of the tenancy with the inclusion of the storage service in the absence of a separate fee and agreement for the service, would tacitly imply that the service was understood to be a part of the tenancy agreement.

The tenant referred to item #20 of the tenancy agreement which stipulates that items must be kept in proper storage areas, and that the spirit of the clause tacitly implies that the storage facility would be a method open to the tenant by which to adhere to the requirement of the clause.

The tenant also referred to the condition inspection report completed at the beginning of the tenancy, which includes a section titled “storage areas, locker” and includes an accompanying field which depicts that the storage locker is in satisfactory condition. The tenant asserted that although the condition inspection report does not expressly state the storage locker is provided as part of the tenancy, its inclusion on the condition

inspection report, which is meant to depict the condition of the premises which constitutes the rental unit, tacitly implies that part of the tenant's obligation under the tenancy extends to the storage locker, such that the tenant is expected to maintain the condition of the storage locker and might be held liable if the condition of the locker is not satisfactory at the end of the tenancy.

The tenant testified that since he understood that parking and storage facilities are included as part of the tenancy agreement, and that the monthly rent paid under the tenancy would enable the tenant the right to possess the rental unit and to access and use services and facilities provided under the agreement, which, in this case, would include parking and storage facilities.

Therefore, the tenant asserted that the landlord should not be able to sever these services from the agreement and implement separate monthly fees for the services, and by extension, should not be permitted to increase the fees for these services, as doing so would be akin to an improper rent increase since the services form part of the provisions of the rental agreement.

Therefore, since, as the tenant asserts, that "rent" under this tenancy agreement includes the provision of services and facilities such as parking and storage, the rent cannot be increased in a fashion other than by adhering to the provisions which govern rent increases as prescribed in the *Act*, and that the landlord's pending implementation of additional fees for parking and storage constitute a rent increase which violates the provisions of the *Act*.

The landlord testified that the parking service and storage facility were not meant to be included as a part of the tenancy agreement, and as such, an increase in the fee, or the implementation of a new fee, for these services, would not be governed by the rent increase provisions of the *Act*.

The landlord testified that the tenancy agreement applies to the rental unit, and that the storage locker is not in the rental unit, rather, it is in a separate area of the building. The landlord asserted that the storage locker is located in a common area, and that although the tenant was permitted to place a lock on the storage locker, the locker remains located in a common area and that the intention was not to imply that the tenant would continue to have exclusive use and access of the storage locker.

The landlord asserted, in response to the tenant's testimony, that the condition inspection report is not part of the tenancy agreement. The landlord also asserted that

parking and storage facilities are offered to all tenants if they request such services. The landlord confirmed that no separate agreement exists with the tenant for parking and storage facilities. The landlord could not recollect if the tenant expressly requested parking and storage facilities under a separate agreement.

Analysis

Upon consideration of the evidence before me, I will outline the following relevant Sections of the *Act* and *Residential Tenancy Regulation* (the *Regulations*) that are applicable to the application before me. I will provide the following findings and reasons when rendering this decision.

Section 7(1)(g) of the Residential Tenancy Regulations (the "*Regulations*") states that a landlord may charge a tenant for "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."

Schedule 5 of the *Residential Tenancy Regulation* provides, in part, the following with respect to the payment of rent:

> **Payment of rent**
> 5 (2) The landlord must not take away or make the tenant pay extra for a service or facility that is already included in the rent, unless a reduction is made under section 27 (2) of the Act.

Under section 1 of the *Act*, the following definition of rent is provided:

> "rent" means 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.

Part 3 of the *Act* provides, in part, the following with respect to rent increases:

> **Rent increases**
> **41** A landlord must not increase rent except in accordance with this Part.
>
> **Timing and notice of rent increases**
> **42** (1)A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a)if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
(b)if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
(2)A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
(3)A notice of a rent increase must be in the approved form.
(4)If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase
43 (1)A landlord may impose a rent increase only up to the amount
(a)calculated in accordance with the regulations,
(b)ordered by the director on an application under subsection (3), or
(c)agreed to by the tenant in writing.
(2)A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

Storage Facility

Based on the testimony and evidence provided by the parties, and on a balance of probabilities, I find that the tenant has sufficiently demonstrated that it is more likely than not that the storage facility was, since the onset of the tenancy, a facility provided under the tenancy agreement. As such, it is reasonable to determine that the provision of rent under the tenancy agreement, as defined in section 1 of the *Act*, includes payment by the tenant for use and exclusive access to services and facilities—namely, storage.

Based on the testimony provided by the parties, I am not persuaded by the landlord's testimony and submissions, and find that the landlord has not demonstrated that the storage facility was covered under a separate agreement. The landlord did not establish that the storage facility was understood by the tenant to be a service separate from the tenancy agreement, such that it would be covered under a separate agreement, and by extension, that the tenant understood that he would have to expressly request for that services as outlined in Regulation 7.

The sworn testimony of the parties provides that the tenant had exclusive use of the storage locker since the onset of the tenancy and was never required by the landlord to submit a separate payment for the use of the storage facility.

Based on the foregoing, I find it is reasonable to accept the tenant's assertion that, given the length of time that the tenant had exclusive use of the storage facility in the absence of a separate fee, that he understood the storage facility to be included as a provision of the tenancy agreement.

Of relevance to the issue of the storage facilities is the legal principle of estoppel. Estoppel is a legal principle whereby a party can waive their right to assert a legal right they might otherwise have. Estoppel arises when:

- the parties have a shared understanding;
- one party conducts itself in reliance on that understanding; and
- that party would suffer a detriment if the other party is now permitted to act inconsistent with that understanding.

Based on the testimony provided by both parties, I find it was understood that the tenant had exclusive access to, and use of, the storage locker since the onset of the tenancy, in the absence of a separate agreement which governed the use of the storage locker, and without having to pay a separate fee for the service.

In addition, the conduct of the parties, and their implied understanding with respect to the tenant's ability to use the storage locker, depicted a tacitly implied understanding that the tenant was able to use the storage locker as part of his tenancy agreement.

Therefore, I find that the principle of estoppel applies to the issue of the storage locker, and the landlord is now estopped from asserting that the tenant is unable to continue use of the storage locker in a manner that has thus far been permitted by the landlord.

As a result, it would not be open to the landlord to charge fees for the storage services, as prescribed in Regulation 7, and by extension, the landlord's request to have the tenant commence payment of fees for storage services would be a violation of Schedule 5 of the *Residential Tenancy Regulation.*

As such, since the storage facilities are required to be provided under the tenancy agreement, the definition of "rent", as defined under section 1 of the *Act*, includes storage facilities.

Therefore, with respect to the issue of the storage facility, it would not be open to the landlord to impose any additional fees or increase the monthly amount required as payment of rent under the tenancy agreement unless the landlord adhered to the rules governing rent increases as defined in the *Act*.

Based on the foregoing, I find that the landlord's intention to impose separate fees, or increase fees, for storage facilities, as outlined in the landlord's October 10, 2018 notification to the tenant, constitutes a rent increase in violation of part 3 of *Act*. Therefore, I find that the landlord is not permitted to implement a new fee for storage, as outlined in the October 10, 2018 document.

Parking

Based on the testimony and evidence provided by the parties, and on a balance of probabilities, I find that the tenant has not sufficiently demonstrated that it is more likely than not that the parking facilities were, since the onset of the tenancy, facilities provided under a separate agreement, and as such, it is reasonable to determine that the provision of rent under the tenancy agreement, as defined in section 1 of the *Act*, does not include payment by the tenant for use and exclusive access to services and facilities such as parking.

The manner in which the tenancy agreement is drafted offers a delineation between a sum identified as rent, in the amount of $975.00, and subsequently depicts a separate fee for parking, in the amount of $20.00. The drafting of the tenancy agreement in this fashion would imply that the separate fee of $20.00 is not intended to form the amount collected under the tenancy agreement as rent.

The tenancy agreement also depicts that a security deposit was accepted from the tenant in accordance with section 19 of *Act*, such that the security deposit was the equivalent of half of the monthly rent payable under the tenancy agreement. The security deposit was determined to be $487.50, which represents half of $975.00, which is the monthly rent under the tenancy agreement. The amount of the deposit further reinforces that the monthly rent under the agreement was limited to the sum of $975.00, and did not take into account the separate fee of $20.00 to be included as part of the sum that comprised rent.

Although there is not a separate agreement or document which governs the parking service provided to the tenant, the fact that the parking fee is included as a fee separate

from rent on the tenancy agreement does not imply by default that it forms part of the tenancy agreement.

Furthermore, the terms of the tenancy agreement do not include any reference to parking facilities being provided to the tenant as part of the tenancy agreement. Therefore, I find that the tenancy agreement does not include parking as a facility provided to the tenant as part of the terms of the tenancy agreement.

The tenancy agreement depicts that a separate fee of $20.00 is collected from the tenant for access to a parking spot. Based on the evidentiary material before me, in the form of the tenancy agreement, I find it more likely than not that the landlord's testimony with respect to the parking issue depicts an account of the intentions between the parties with respect to the provisions of the parking facility being a separate service not included as part of the tenancy agreement, and that the $20.00 fee per month for parking was a fee separate from rent collected under the tenancy agreement.

The onus is on the tenant to establish that the parking service was a facility included as part of the tenancy agreement, and I find that the tenant has not met that burden, given that the documentary evidence, such as the tenancy agreement, does not support the tenant's testimony.

Based on the foregoing, I find that the parking space provided to the tenant is not a service or facility required to be provided to the tenant under the tenancy agreement.

As such, I find that Section 7(1)(g) of the *Regulations* permits the landlord to charge a fee for the parking spaces and such a fee is not rent within the definition of section 1 of the *Act*. Further, I find that I do not have any authority under the *Act* or the *Regulations* to limit or cancel the landlord's increase of this parking fee. As such, I dismiss the tenant's application to cancel the parking fee increase.

As part of his application, the tenant provided a written submission dated November 17, 2018, in which he requested that if the application before me resulted in a decision in the tenant's favour, that the decision apply and benefit other tenants residing in the same building as the tenant, pursuant to section 64(4) of the Act.

I find that there is no evidence before me to establish whether other tenants of the same landlord are a party to a dispute resolution proceeding in respect of the same matter which forms the substantive issue of the application before me, and therefore, the

provisions of section 64(4) do not apply in this circumstance, and I decline to grant the tenant's request.

As the tenant was partially successful in this application, I find that the tenant is entitled to recover the $50.00 filing fee paid for this application.

Conclusion

The tenant's request to cancel the implementation of a $35.00 fee for use of the storage locker is granted. The landlord is not permitted to implement fees for storage facilities, and the landlord's notice for rent increase of $35.00 for tenant's use of storage lockers is cancelled and is of no force and effect.

The tenant's request to cancel the notice of fee increase of $30.00 relating to the tenant's parking space is dismissed without leave to reapply.

The landlord is not permitted to increase the monthly rent paid by the tenant as set out in its October 10, 218 letter. The tenant remains at liberty to continue payment of the monthly rent amount of $1,101.00, until such time that the monthly rent is increased in accordance with the *Act*. However, as stated above, Section 7(1)(g) of the *Regulations* permits the landlord to charge a fee for the parking spaces and such a fee is not rent within the definition of section 1 of the *Act.* Therefore, the landlord remains at liberty to adjust or increase the fee associated for parking, as such a fee increase would not be governed by the rent increase provisions of part 3 of *Act*.

The tenant may deduct $50.00 from a future rent payment on one occasion only as partial reimbursement of the filing fee pursuant to section 72 of 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: January 24, 2019

Residential Tenancy Branch