



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property Management
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

The tenant seeks an order for the landlord to comply with the *Residential Tenancy Act* (the “Act”), the *Residential Tenancy Regulation*, or the tenancy agreement, under section 62 of the Act. In addition, the tenant seeks compensation for the cost of the filing fee pursuant to section 72 of the Act.

The tenant applied for dispute resolution on March 1, 2019 and a dispute resolution hearing was held on April 12, 2019. The tenant attended the hearing and was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The landlord’s agent did not attend.

I have reviewed evidence submitted that met the requirements of the *Rules of Procedure*, and to which I was referred, but only evidence relevant to the issue of this application are considered in my decision.

Issue

Is the tenant entitled to an order under section 62 of the Act?

Background and Evidence

The tenant testified and confirmed that the tenancy began on July 1, 2007. Monthly rent is \$982.00, which includes \$10.00 for an extra parking stall. In other words, rent is \$972.00 without the extra parking stall fee. A copy of the written tenancy agreement was submitted into evidence.

The tenant has two issues that she would like addressed through an order: (1) the landlord wants to start charging \$10.00 for the tenant's regular parking stall; and, (2) the landlord wants to impose a restriction on when the tenant (and her fellow neighbours in the building) can access her storage locker.

The tenant testified that over the course of the 7-year tenancy, she has always been provided a parking stall at no extra charge. The tenancy agreement includes a section titled "RENT", and parking is one component of the rent, but no charge or fee is indicated for parking. That is, parking is essentially free and has been since 2007.

The landlord took over as the new landlord about two years ago, and (1) wants to increase the tenant's extra parking stall cost to \$20.00, and (2) notified the tenant that she must vacate her regular parking stall by the end of April 2019, otherwise she must start paying \$10.00 a month for it. They gave the tenant a month's notice and requested that she sign a form agreeing to this new charge. She has not signed the form.

Finally, the landlord has recently advised all the tenants in the building that they may only access their storage lockers on weekdays, between certain hours, and that the tenants have to provide 24-hour notice to the landlord to access the locker. The landlord also informed the tenants that they cannot change the locks (which are the property of the tenants) without the landlord's permission. Submitted into evidence was a copy of a form from the landlord that included these restrictions.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the tenant seeks an order under section 62 of the Act for issues related to parking and to the storage lockers.

Under section 62(3) of the Act, an arbitrator may "make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies."

As parking has been "free," or, otherwise included in rent since 2007, the landlord may only begin charging for parking if proper notice is given. As the tenancy agreement

includes parking as a component of rent, any change to that component therefore is a change to the rent being charged. As such, if the landlord wants to start charging for parking then they “must give a tenant notice of a rent increase at least 3 months before the effective date of the increase,” pursuant to section 42(2) of the Act.

Further, the landlord must provide such notice on the approved form, pursuant to section 42(3) of the Act. I find that the landlord's notice to the tenant that she must vacate her parking stall by the end of April 2019, or otherwise start paying \$10.00, to be of no legal force or effect.

The tenant has the legal right to keep parking in the stall unless and until the landlord gives proper notice under section 42 of the Act should there be a rent increase pertaining to the parking.

In addition, the landlord may not terminate the tenant's use of the tenant's parking stall if the parties agree that the parking stall is a material term of the tenancy agreement, pursuant to section 27(1) of the Act. If it is not a material term of the tenancy agreement, then the landlord may only terminate the tenant's use of the parking stall if proper notice is given along with a corresponding reduction in rent, pursuant to section 27(2) of the Act.

Similarly, the landlord may not restrict access to the tenant's storage locker without complying with section 27 of the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving her claim for an order under section 62 of the Act.

The particulars of my order are set out below.

Finally, as the tenant was successful in her application I grant her a monetary award of \$100.00 for the cost of the filing fee. I order that the tenant may make a one-time deduction in the amount of \$100.00 from her rent for May 2019 in full satisfaction of this claim.

I make no finding as it relates to the extra parking stall being provided to the tenant by the landlord.

Conclusion

I HEREBY ORDER THAT

- (1) the landlord must not terminate or otherwise restrict the tenant's access to a parking stall without proper notice under the Act;
- (2) the landlord must not increase the rent or otherwise attempt to charge the tenant a parking fee without proper notice under the Act;
- (3) the landlord must not terminate or otherwise restrict the tenant's access to, and use of, her storage locker without proper notice under the Act; and,
- (4) the tenant may deduct \$100.00 from the rent for May 2019 as compensation for the filing fee.

Should the landlord terminate or otherwise restrict either the tenant's use of the parking stall or the tenant's use of her storage locker, or both, the tenant may apply for dispute resolution and seek additional compensation for any such termination or restriction.

This decision is final and binding and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 12, 2019

Residential Tenancy Branch