



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wiedman and Sully, Surrey Garden
Apartments and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order in relation to a rent increase - Section 43;
2. An Order for the Landlord’s compliance - Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant states that there is no longer any claim in relation to the Landlord’s compliance. I therefore dismiss this claim.

Issue(s) to be Decided

Is the Tenant required to pay a parking increase separate from the rent?

Is the Tenant entitled to recovery of a rental increase paid for parking?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy originally started on May 1, 2016 for a fixed term. At the end of the fixed term, the Parties entered into another fixed term agreement and continued thereafter to sign fixed term agreements until the latest tenancy agreement with a fixed term expiring on April 30, 2019. The Parties have not entered into another fixed term tenancy agreement and the tenancy is now a periodical

tenancy. In May 2016 the Tenant signed a “lease addenda” package that included a parking agreement. The lease addenda sets out that the addenda package applies to “each new fixed term agreement”. Section 7 of the parking agreement provides that “rent for this parking stall is as noted in the Tenancy Application/Lease Agreement or any subsequent Change To The Terms of the Lease Agreement”. Section 11 of the parking agreement provides that “Resident acknowledges that the payment amounts noted on the lease agreement are subject to change from time to time as determined by the Property Owner”. No other addenda have been signed. Nothing in the now current periodic tenancy refers to any addenda and sets out under the heading “The Monthly Rent shall be” an apartment rent of \$829.00 and parking of \$10.00 with the total rent of \$839.00. On November 21, 2018 the Tenant received a notice of parking increase setting out that the \$10.00 increase for the Tenant’s parking spot would come into effect on March 1, 2019 or at the beginning of a new lease. The Tenant did not pay a parking increase until May 1, 2019. The Landlord agrees to reimburse the Tenant \$10.00 should the Landlord be found not capable of increasing the parking portion beyond that which is set out in the current tenancy agreement.

The Landlord states that they are confused about whether the parking term in the now periodic tenancy continues although the Landlord agrees that the parking amount is determined by the terms of the tenancy. The Landlord argues that section 11 of the addenda allows the Landlord to increase the parking portion independent of the prescribed rental increases. The Landlord argues that the parking portion is separate from the rent and may be increased separately as they have never included that portion in any of the rental increases given to the Tenant and because they gave the Tenant three months’ notice of the parking portion increase.

Analysis

Section 44(3) of the Act provides that if, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the

landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms. Based on the agreed facts that no further tenancy agreement was entered into following the end of the fixed term of April 2019, I find that the tenancy continues on a periodic basis and that the terms of the last fixed term tenancy remains the same, including the total rent payable of \$839.00.

Section 1 of the Act provides that "**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. The Act defines "**service or facility**" as including parking that is provided or agreed to be provided by the landlord to the tenant of a rental unit.

As the total rent payable in the tenancy agreement includes an amount for parking I find that the tenancy agreement includes the provision of a parking space.

The addenda, originally signed at the outset of the original fixed term tenancy, sets out that it applies to "each new fixed term tenancy" and does not set out whether it applies to a fixed term tenancy that becomes a periodical tenancy. There is nothing in the now periodical tenancy agreement that sets out that any addenda is attached and forms part of the tenancy agreement. For these reasons and as no new fixed term tenancy was agreed to, I find that the addenda, and in particular the section that allows the Landlord to increase the parking portion at the Landlord's sole discretion are not terms of the tenancy.

Although the Landlord argues that the Landlord still may increase the parking portion of the rent as the parking portion is separate from the rent, given that the tenancy agreement sets out that the entire rent paid includes a parking space I find that the parking is a service or facility that is required to be provided under the tenancy agreement and that the Landlord may not charge a parking fee or increase a parking portion of the rent independent of the total rent payable. The Landlord's argument that past rent increases did not include a portion of the total rent payable is not evidence

that that the portion not increased is not rent. Although a landlord may not increase the rent based on a rental amount higher than is being paid, nothing in the Act requires the Landlord to seek a rental increase on a lesser amount of rent payable.

Section 14(2) of the Act provides 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. Section 6(3)(a) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. 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. Even if the addenda does apply to the now periodical tenancy agreement, section 7 of the parking addendum sets out that the rent for the parking is as noted in the tenancy agreement or any changes to the tenancy agreement. As there has been no agreement to change the terms of the tenancy agreement and as the tenancy agreement has been found to include parking I find that section 11 of the parking addendum that allows the Landlord, without the agreement of the Tenant, to change the “payment amounts noted on the lease agreement” is in conflict with both the tenancy agreement and the Act and is therefore not enforceable.

For the above reasons I find that the full rent of \$839.00 may only be increased upon mutual agreement of the Parties, or through the rent increase provisions of the Act.

As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the **\$100.00** filing fee. Based on the agreement of the Landlord to return the extra **\$10.00** paid by the Tenant for May 2019 where the Landlord has not been found able to increase only the parking portion of the rent, and as this finding has been made, I find that the Tenant is entitled to return of \$10.00 for a total entitlement of **\$110.00**. The Tenant may deduct this amount from future rent payable.

Conclusion

The Tenant is not required to pay a parking increase independent of the full rent payable that includes parking for the total rent payable.

I grant the Tenant an order under Section 67 of the Act for **\$110.00**. 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 Act.

Dated: May 15, 2019

Residential Tenancy Branch