



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WINSON ESTATES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RI, FF

Introduction

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

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence on June 2, 2019. Both parties confirmed the landlord served the tenant with the submitted documentary evidence via Canada Post Registered Mail on June 26, 2019. Neither party raised any service issues. I accept the undisputed testimony of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

At the outset, the tenant's application was clarified. The tenant stated that on January 17, 2019 the landlord issued a notice of a rent increase to begin on May 1, 2019 increasing the monthly rent from \$2,423.00 by \$60.00 to \$2,483.00. The tenant stated that the landlord has subsequently issued a "Parking Fee Increase" which the tenant claims is a rent increase disguised as a parking fee increase.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's additional rent increase?
Is the tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that this tenancy began on September 15, 2000 on a fixed term until September 30, 2001 as per the submitted copy of a signed tenancy agreement dated August 22, 2000. The monthly rent was \$1,625.00 payable on the 1st day of each month. A separate \$35.00 fee for parking is noted. A \$812.50 security deposit was paid on August 22, 2000.

The tenant seeks an order cancelling/setting aside the "Parking Fee Increase" notice issued by the landlord dated March 29, 2019 which states in part that "your parking fee will increase from \$35.00 to \$75.00 per stall per month effective May 1, 2019".

The tenant has argued that this is a second "rent increase" and is more than the allowable rent increase as per the Residential Tenancy Act. The tenant stated that the notice of rent increase notes "Parking \$70.00" and that by placing this on the notice of rent increase the landlord is not allowed to issue a separate notice of rent increase for the parking.

The landlord disputes this claim stating that as per the original signed tenancy agreement there is a separate fee for "parking". The landlord also stated that there is also a separate "Parking Agreement" dated February 29, 2002 entered into by the tenant. It states in part that \$35.00 per month beginning on March 1, 2002 payable in advance on the first day of each month was agreed to for a parking stall. The landlord also noted that the tenant rents two parking spaces, one for which there is a signed "Parking Agreement" and the second without one. Both parties confirmed that the tenant pays \$35.00 per parking stall for a total of two parking stalls being rented by the tenant for a total of \$70.00. The landlord clarified that the "Parking \$70.00" noted on the notice of rent increase was to clarify for the tenant what rent was being paid and what parking fee(s) were being paid by the tenant. The landlord noted that in the "Parking Agreement" that it states in part,

The Owner/Tenant(s) covenants to pay rent, without demand at the times in the manner specified herein provided without deduction, abatement or set off...**One calendar month notice will be issued by the STRATA CORPORATION/LANDLORD to the OWNER(S)/TENANTS(S) FOR any parking stall rent adjustments...**

The landlord states that this section of the agreement provides for notice of any changes to the rent. The landlord argues that the parking rent fee increase is separate from the rent increase.

The tenant confirmed in his direct testimony that the parking fee is listed separately from the monthly rent. The tenant confirmed that a separate parking agreement was made for one of the two parking stalls, but that both stalls are treated the same as part of the "parking agreement".

Analysis

Section 43 of the Act speaks to the amount of a rent increase and states in part that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by an Arbitrator subject to an application or agreed to by the tenant in writing. A tenant may not make an application for dispute of a rent increase that complies with the Act.

Both parties confirmed that the notice of rent increase dated January 17, 2019 is in compliance with the Act. The tenant seeks a finding that the "Parking Fee Increase" notice be cancelled as he considers it a rent increase and that the notice of rent increase dated January 17, 2019 . The tenant argues that the landlord by listing the existing parking rent fee on the notice of rent increase prevents the landlord from issuing a separate parking fee increase. The landlord has argued that the rent increase and the parking fee increase are separate and cannot be considered the same for rent. The landlord has provided evidence that a separate parking fee and a parking agreement exists. The tenant confirmed these details in his direct testimony. On this basis, I find that the tenant's application has failed. The "Parking Fee Increase" is a separate notice not related to "rent" for the rental unit. This is shown in the signed tenancy agreement and again in the "parking agreement". The "Parking Fee Increase" notice is valid.

Conclusion

The tenant's application is dismissed without leave to reapply.

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: July 15, 2019

Residential Tenancy Branch