



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 for the Landlord to comply - Section 62; and
2. 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.

Issue(s) to be Decided

Is the Tenant entitled to an order for compliance?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Parties agree that the tenancy started in June 2008 and that as of January 1, 2020 the Tenant is required to pay rent of \$1,030.00 on the first day of each month.

The Tenant states that there is no written tenancy agreement and has no recall of being given a tenancy agreement to sign. The Tenant states that at the outset of the tenancy the Tenant was provided 2 front parking spots and 2 back parking spots included with the rent. The Tenant states that at move-in all the other tenants had their cars parked in the back. The Tenant states that they have used the back-parking spots since the onset of the tenancy. The Tenant states that the Landlord has given the Tenant three

notices to stop parking in the back or if parking to pay \$2.00 per day. The Tenant states that proof of being provided with those spots is shown by the Landlord's notice dated May 1, 2014 wherein the notice states that "as of May 1, 2014 there will be a parking fee". The Tenant states that it continued to intermittently use the back-parking spots for guests as the two parking spots in the front were sufficient for the cars of the Tenant and one occupant, the Tenant's daughter. The Tenant states that the other occupant, the Tenant's son started using the back-parking spot after buying a car. The Tenant states that since the Landlord threatened to tow the son's car from the back in January 2020 the son has been parking on the street and that the Tenant has not used the back parking. The Tenant states that while the parking is not essential the Tenant seeks an order that the Landlord comply by providing the back-parking spots to the Tenant and if removing the parking spots to provide a comparable rent reduction.

The Landlord states that a tenancy agreement was given to the Tenant at the outset of the tenancy but that it was not signed by any tenant. The Landlord states that at the outset of the tenancy the Tenant was only given 2 front parking spots with rent and that the Tenant was never given spots at the back. The Landlord states that the Tenant would occasionally use the back two spots. The Landlord states that it started to tell the Tenant to move its cars from the back in 2010 and that over the years the Tenant has repeatedly been told not to park there whenever a car was found parked. The Landlord states that it has never kept any record of the times the Tenant was told to move its or its visitor's cars.

Analysis

Section 62(3) of the Act provides that the director 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. There is nothing in the Act that requires a landlord to include parking with the rent. The Tenant did not provide a copy of a tenancy agreement setting out terms for the inclusion of the back parking. While I accept that an

oral tenancy agreement exists, the Tenant did not provide any evidence that details any oral agreement for the Tenant to have 2 back parking spots. The Tenant only offers evidence that it used the back parking since the onset of the tenancy. I consider that mere usage is not evidence of a binding agreement to provide parking. I also consider the undisputed evidence that the Tenant has been told for at least 7 years by the Landlord that parking was not provided in the back. The Tenant did nothing until 2020 to assert a parking agreement. The parking notice indicating that as of May 2014 charges will apply to anyone parking is directed to all tenants and is not evidence of an agreement between the Tenant and the Landlord that the Tenant was provided back parking spaces. In these circumstances and given the Landlord's evidence of no agreement for back parking, I find on a balance of probabilities that the Tenant has not substantiated that the Landlord is out of compliance with the tenancy agreement as the Tenant has not substantiated on a balance of probabilities that the back-parking spots were included in the tenancy agreement. I therefore dismiss the claim for an order for compliance. As the Tenant has not been successful with this claim I decline to award recovery of the filing fee and in effect the application is dismissed in its entirety.

Conclusion

The application is dismissed.

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: April 2, 2020

Residential Tenancy Branch