



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KS & SY HUNG HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDCT, FFT, OLC

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on January 20, 2020, wherein the Tenants sought monetary compensation from the Landlord, an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation* and/or the residential tenancy agreement as well as recovery of the filing fee.

The hearing of the Tenants' Application was scheduled for 9:30 a.m. on March 23, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord?
2. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement?
3. Should the Tenants recover the filing fee paid for their Application for Dispute Resolution?

Background and Evidence

In support of their claim the Tenant, R.B. testified as follows. She stated that the parties entered into a verbal tenancy agreement in September 2006 and the Tenants moved into the rental property in October of 2006. Originally the rent was \$825.00 per month.

R.B. stated that since the beginning of the tenancy the Tenants have had one parking spot (which is large enough for two vehicles) included in their rent. R.B. confirmed that they were not required to pay for the parking spot.

R.B. stated that by letter dated January 14, 2020 the Landlord asked the Tenants to pay \$50.00 per month per vehicle (a copy of this letter was provided in evidence). In this letter the Landlord wrote the Tenants could no longer park for free. R.B. stated that they have been parking two vehicles in one spot since the beginning of the tenancy although for approximately two years they only had one vehicle; that said, for the last five to six years they have had two vehicles in the spot.

R.B. confirmed that they have paid the requested \$100.00 per month for parking for February and March, 2020. In their claim, the Tenants sought reimbursement of the amounts they have paid for parking.

In terms of the rent increase, R.B. confirmed that the rent increase they are disputing is the Notice of Rent Increase signed September 23, 2019, which increased their rent from \$936.00 to \$960.33 effective January 1, 2020 (a copy of which was provided in evidence).

R.B. further confirmed that they have paid the requested \$24.33 rent increase since January 1, 2020. In the claim before me they sought return of the amounts paid pursuant to the increase for the months January, February and March 2020.

Although the Notice of Rent Increase was dated September 23, 2019, R.B. testified that they received the Notice of Rent Increase on October 10, 2019. She stated that she was not away from the rental unit between September 30, 2019 and October 10, 2019. The Tenant confirmed that it is her position that if the Notice of Rent Increase is deemed valid, it should not have come into effect until February 1, 2020 based on the date of service.

The Tenants' position is that the rent increase is invalid as the Landlord's Property Manager, W.R.H., withdrew the Notice of Rent Increase. In support, the Tenants provided a copy of a text they received from W.R.H. wherein he wrote as follows:

"Hi [R.], those notice should not have gone out. I am actually going to be requesting an extraordinary rent increase above the mandated amount because the last increase was indeed too long ago. And the rental rate has not been adjusted to reflected the years of increases in property taxes alone. This is also going to be compounded with the fact at I have an outstanding invoice for a plumbing repair, the storage room situation and the translink parking levy of 26% per parking..."

R.B. confirmed that to her knowledge the Landlord has not made an application for an additional rent increase.

In response to the Tenants' claim W.R.H. confirmed that from October 2006 until February 2020 they did not receive payment for parking from the Tenants. W.R.H. claimed that the Tenant "was never allowed to park in those spaces" and the Tenant "could have parked there, but she wasn't allowed".

In support of the Landlord's position the parking was not included in the rent, W.R.H. stated that the "rent roll" has an individual column for parking. W.R.H. also submitted that I should take notice of the other tenancy agreements he had with all other tenants confirming they do not have parking.

W.R.H. also noted that the rent roll includes a note about the "construction time" which impacted all tenants ability to park on site. In terms of the construction time, W.R.H. stated that the "main construction time" started in 2004 and continued until 2011. He also stated that no one had parking "some time in December" 2010 because they removed an oil tank.

W.R.H. testified that there are 11 rental units in the rental building. He further confirmed there are 8 parking spots, but “naturally there are 4”. He stated that the garage door was removed in the later part of the 1990’s. W.R.H. stated that “there are only going to be four spots”, as the door is going to go back up and then there will only be four spots, not eight.

In terms of the rent increase W.R.H. confirmed that he sent the text message to the Tenant that the Notice of Rent Increase should not have gone out. He described his text as “just a comment”. He further stated that it was immaterial what he says and that his text did not rescind, retract or dismiss that rent increase notice.

W.R.H. confirmed that the Landlord has not made an application for an additional rent increase.

The Landlord’s Property Administrator, W.K.H., also testified. He confirmed that he signed the Notice of Rent Increase. W.K.H. stated that the tenants of the rental building deal directly with the Property Manager, W.R.H., who has been the Property Manager for “more than 3 years”. W.K.H. confirmed that he also deals with the tenants directly, in terms of collecting the rent, but mostly performs administrative functions.

W.K.H. stated that the Notice of Rent Increase was not sent to all the tenants in the building, as some of them were there for less than a year. But those who were eligible for a rent increase received one.

W.K.H. stated that he was not aware that W.R.H. had sent a text message to the Tenants regarding the fact the rent increase should not have been sent out; he stated that he only became aware of this when he saw the Tenants’ evidence package. W.K.H. noted that this miscommunication is not a common occurrence.

W.K.H. also noted that he provided rent increases to five other units and they all confirmed receiving the Notice “on time” and paid their rent on time as of January 1, 2020.

In terms of the parking, W.K.H. stated that there are eight parking stalls at the rental building: four parking stalls under the building and then four other stalls in the back of the building. W.K.H. stated that he has never received payment for parking from these Tenants prior to 2020. W.K.H. further confirmed that he never had their car towed, nor has he ever sent them written warnings that they were not to park there.

W.K.H. confirmed that he did not show the Tenants the rental property in 2006. He stated that it was W.R.H. who originally showed the Tenants the rental unit.

Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities I find as follows.

Parking

I find that the residential tenancy agreement includes parking for two vehicles. I am satisfied based on the evidence before me that until 2020, the Tenants were not required to pay for parking. I am further satisfied that their agreement includes parking for two vehicles as the evidence indicates that for the vast majority of the tenancy the Tenants have parked two vehicles in one spot at no extra charge.

Although other tenants in the building may pay for parking, I find that this tenancy agreement for these particular Tenants includes parking for two vehicles at no additional charge.

I find the Landlord is estopped from charging the Tenants parking fees as the Landlord has permitted the Tenants to park for free since their tenancy began.

Although a tenancy agreement may be amended, the Landlord requires the Tenants' consent as required by section 14(2). In this case, I find the Tenants have not consented to the Landlord's request that they pay for parking.

I therefore grant the Tenants' request for an order that the Landlord comply with the tenancy agreement and provide the Tenants with a parking space which accommodates two vehicles at no extra charge.

As I have found the tenancy agreement included parking, I find the Tenants are entitled to recover the \$100.00 paid per month for the months February, March and April 2020 for a total of **\$300.00**. (Although the hearing occurred on March 23, 2020, I am assuming the Tenants paid the \$100.00 parking fee for April 2020 as well; in the event I am incorrect, the Tenants are entitled to only **\$200.00**).

Rent Increase

I will now address the Tenants' request for return of rent paid pursuant to the Notice of Rent Increase.

I find the Notice of Rent Increase complies with Part 3 of the *Residential Tenancy Act* and Part 4 of the *Residential Tenancy Regulation* save and except for the date the increase is to take effect. I accept the Tenant's evidence that they received the Notice of Rent Increase on October 10, 2019. As aptly pointed out by the Tenants, the Landlord bears the burden of proving the date the Notice was mailed to the Tenants; as I was not provided any documentary evidence to support the Landlord's claim that they mailed the Notice on September 25, 2019, I am unable to prefer the Landlord's evidence in this respect. I accept the Tenants' evidence that they received the Notice on October 10, 2019.

Pursuant to section 42(2), the Tenants are entitled to three month's notice of a rent increase; accordingly, the effective date of the increase is February 1, 2020.

Although I have found the Notice of Rent Increase to comply with the *Act*, I find that the Landlord withdrew this Notice. I accept the Tenants' submissions that they primarily dealt with the Property Manager, W.R.H., for matters relating to their tenancy. I therefore find that the text message sent from W.R.H. had the effect of withdrawing the Notice of Rent Increase. In this message, W.R.H. wrote that he believed the Notice of Rent Increase should not have been sent as he believed the Landlord should pursue even more of an increase due to various factors. As he was the Landlord's representative with whom the Tenants dealt, it is understandable that they relied on the contents of his text message and did not pay the increased rent required by the Notice of Rent Increase.

I agree with the Tenants and find that W.R.H.'s text message amounts to an express or implied waiver of the Landlord's right to rely on the Notice of Rent Increase. I accept the Tenants' submissions that they were induced by this text message to act upon the belief that there was a waiver and did not pay the increase in rent on January 1, 2020.

I therefore find the Landlord has withdrawn the Notice of Rent Increase issued on September 23, 2019. Any amounts paid by the Tenants pursuant to this Notice are also recoverable by the Tenants.

The evidence before me indicates the Tenants paid \$24.33 on January 15, January 29 and March 1, 2020 for a total of **\$72.99**. Those amounts are recoverable from the Landlord. As the hearing of this matter occurred on March 23, 2020, I am assuming the Tenants paid the \$24.33 increase for April 2020; as such, they are entitled to recover the sum of **\$97.32**. In the even the Tenants did not pay the increase for April 2020, their entitlement is **\$72.99**.

As the Tenants have been successful in their Application, I find they are also entitled to recover the **\$100.00** filing fee.

Pursuant to section 72 of the *Act*, I permit the Tenants to reduce their May rent by the amounts awarded.

Conclusion

The Tenants' Application for an Order that the Landlord comply with the residential tenancy agreement is granted. As a term of this tenancy, the Landlord must provide the Tenants with a parking spot which is large enough to accommodate two vehicles at no extra charge.

The Tenants' request for monetary compensation from the Landlord is granted. The Tenants may reduce their next months' rent for any amounts paid for parking, or pursuant to the Notice of Rent Increase issued on September 23, 2019. The Tenants are also entitled to reduce their next months' rent by \$100.00 representing recovery of the filing fee.

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: April 22, 2020

Residential Tenancy Branch