



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORTE REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, FFT

Introduction

On April 16, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to dispute a rent increase pursuant to Section 41 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with D.L. attending as his counsel. M.U. and C.K. attended the hearing as agents for the Landlord. The Tenant, M.U., and C.K. provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing and evidence package to the Landlord by email on April 17, 2020 and M.U. confirmed that the Landlord received this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

M.U. advised that the Landlord did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Was a rent increase implemented contrary to the *Act*?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2009. M.U. advised that rent was currently established at \$1,236.00 per month and was due on the first day of each month; however, it is the Tenant's position that rent is \$1,321.00 per month. A security deposit of \$490.00 was also paid. An incomplete copy of the tenancy agreement was submitted by the Tenant, as documentary evidence.

D.L. advised that as per the signed tenancy agreement, parking of \$10.00 was included as a part of the total rent due each month. Furthermore, at the start of the tenancy, the Tenant was provided with four parking spots and two storage lockers, and there was no separate parking or storage agreement. Therefore, these are all facilities that were provided to the Tenant as part of the rent.

He referenced a letter sent by the Landlord, dated December 5, 2018, that advised the Tenant that an inventory was conducted on the availability of storage lockers and that the Tenant must reduce his storage locker use down to one locker, in fairness to other tenants, and as per the building policy of one locker per rental unit. Alternately, as of February 1, 2019, any tenant with more than one storage locker will be charged \$25.00 per month for each additional locker. As the Tenant was provided with two storage lockers at the start of the tenancy and that this was included in his rent, this extra charge amounts to an illegal rent increase.

He then referred to a letter sent by the Landlord, dated March 14, 2019, that advised the Tenant that an inventory was conducted on the availability of parking spaces and that tenants of the building have had unwritten authorization to use more than one parking space. As such, the tenants must sign a parking agreement limiting the amount of stalls each tenant is permitted to use. In addition, as of June 1, 2019, parking fees will be standardized to \$30.00 per month and additional parking spaces would cost \$40.00 per month. He then referred to a letter sent by the Landlord, dated April 15, 2019, that advised the Tenant that the charge for additional parking stalls would be \$30.00 per stall, effective June 1, 2019. He advised that this letter referred to an attached "Parking Agreement"; however, no such agreement was signed or attached. He stated that even if this Parking Letter was signed by the Tenant, as parking is included in the rent, the Landlord must follow the requirements of the *Act* in order to properly increase the rent. Furthermore, despite the Tenant paying for the additional parking as of June 1, 2019, these payments do not constitute acceptance of a rent increase or that this was a parking agreement.

D.L. advised that it is the Tenant's position that parking and storage are included as part of rent, as per the tenancy agreement, and that these letters issued by the Landlord do not comply with the requirements of the *Act* as they amount to illegal rent increases. He stated that the Tenant's rent prior to February 2019 was \$1,142.00 but he started paying \$25.00 per month extra on February 1, 2019 for the extra storage locker. Furthermore, as of June 1, 2019, the Tenant started paying \$60.00 per month extra for his two additional parking stalls per the signed April 15, 2019 letter; however, as parking was included as part of his rent, he really should have only been paying \$10.00 per month for each of the four parking spots he was permitted to use. Between the illegal rent increases for storage and parking, the Tenant has been paying an additional \$85.00 per month that he should not have been paying. It is his opinion that the Tenant should only have been paying the \$10.00 per month for each of the four parking spots he was permitted to use, and nothing extra for storage. D.L. advised that the Tenant wrote a letter to the Landlord in May 2019 and another letter a few months ago, disputing the storage and parking fees; however, there was no response from the Landlord. These letters were not submitted as documentary evidence. He stated that the Tenant did not take action with respect to these issues sooner as he suffers from a disability which affected his ability to respond with more haste.

M.U. advised that the Landlord did inventory checks of the storage lockers and it was determined that there was a shortage of available storage lockers for the tenants of the building. As a result, the letter of December 5, 2018 was sent to all the tenants advising that each tenant would be entitled to one storage locker and that any additional storage lockers would be charged at \$25.00 per month as of February 1, 2019. He stated that a storage locker was included as part of the Tenant's rent, but he was only entitled to one locker. However, he acknowledged that the Tenant's tenancy agreement does not stipulate that he was entitled to only one storage locker. He stated that as the tenancy started so long ago, he does not have any documentation confirming that the Tenant was entitled to two storage lockers, but this was only discovered after an inventory was conducted.

Regarding the parking issue, M.U. advised that parking was provided as a part of the tenancy at \$10.00 per month; however, in accordance with the tenancy agreement, this was not included as part of the rent, but was an additional charge. At some point, the Tenant had a verbal agreement with the previous building manager that he would be entitled to four parking stalls and that he would pay \$10.00 per month for all four stalls. However, after an inventory was conducted and it was discovered that there was a lack of available parking for other tenants, the notice of March 14, 2019 was sent to all the tenants advising them that parking fees would be standardized, that a stall would be provided to each tenant at \$30.00 per month, and that any additional stalls would be charged at \$40.00 per month. Despite this letter, the Tenant was provided another letter dated April 15, 2019, that he signed, agreeing that he would pay \$30.00 per month per stall, for two specific stalls. According to M.U., this would be in addition to two other stalls that the Tenant would have access to, thereby allowing him to have four parking stalls for the cost of \$60.00 per month, which he had been paying as of June 1, 2019.

He stated that the original cost of a parking stall at \$10.00 per month is low and the cost to maintain and upkeep each stall is considerably higher.

D.L. advised that section 6 of the tenancy agreement indicates that parking is included as a part of the rent. As a result, the Tenant should only be paying \$10.00 for parking and as a concession to the Landlord, \$40.00 per month for four parking stalls is a fair compromise.

The Tenant advised that he was told at the start of the tenancy that parking costs \$10.00 per month. Furthermore, he was provided with four parking spots at the start of the tenancy by the building manager. He stated that these four spots were provided to him as they were undesirable stalls.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 41 of the *Act* stipulates that the Landlord may only increase rent if they comply with the Sections pertaining to rent increases in the *Act*. Furthermore, Section 42 states that the Landlord cannot impose a rent increase for at least 12 months after the date on which the Tenant's rent was first payable for the rental unit or the effective date of the last rent increase made in accordance with this Act. As well, the Landlord must give the Tenant notice of a rent increase at least 3 months before the effective date of the increase, and this notice must be in the approved form. Finally, Section 43 indicates that the Landlord may impose a rent increase only up to the amount: calculated in accordance with the Regulations, ordered by the Director of the Residential Tenancy Branch, or agreed to by the Tenant in writing.

When reviewing the totality of the evidence before me, I find it curious that the entire tenancy agreement was not submitted as documentary evidence; however, the consistent testimony indicated that the Tenant was more likely than not provided with two storage lockers when he moved into the rental unit. As such, I am satisfied that these were included as a part of the tenancy agreement. Based on the Landlord's letter dated December 5, 2018 then, I find that this would be more of a termination or restriction of a service or facility that was provided by the tenancy agreement, but I can also understand how this issue would be interpreted as a rent increase, so it will be addressed as such.

As I am satisfied that two lockers were provided to the Tenant as part of the tenancy agreement, I find that these were included as part of the rent that is owed each month. Therefore, the Landlord cannot change the terms of the tenancy agreement and charge the Tenant for a second storage locker that he was originally provided and pays for as

part of his rent. Consequently, I find that the Landlord's letter dated December 5, 2018 to be an attempt to increase the rent illegally. As the Landlord did not serve the Tenant with the proper form, or timeframe to increase the rent pursuant to the *Act*, I am satisfied that the Tenant has been paying \$25.00 per month extra since February 2019. As a result, the Tenant may withhold these overpayments from the next month's rent. Should the Landlord wish to increase the rent at any point going forward, the Landlord must comply with the requirements of the applicable Sections of the *Act* to do so.

With respect to the Tenant's claim that the parking was included as part of the rent and that any increase or change in these terms would constitute an illegal rent increase, when I read the tenancy agreement signed April 7, 2009, I note that rent for the basic living space was \$980.00. While parking was noted as an additional \$10.00 and was included as the total amount to be paid to the Landlord monthly, I find it important to note that the security deposit collected was \$490.00, which is exactly half of the cost of the basic living space amount noted. I find it reasonable to infer that if the Landlord had considered parking to be included in the rent, the Landlord would have more likely than not collected a security deposit that would have reflected this and been half of the \$990.00 total. Based on this, I interpret that parking was intended to be separate from rent.

Furthermore, to support this, while no document titled "Parking Agreement" was submitted, the Parking Letter dated April 15, 2019 appears, in my view, to be an agreement between the Landlord and the Tenant that he would be permitted the use of two parking spaces at \$30.00 per month per parking stall. This would be in addition to the two other stalls that the parties agreed the Tenant would have access to for free, thus continuing to allow the Tenant to have four parking stalls at \$60.00 per month total. Had there not been an understanding that parking was separate from rent, it is not clear to me why the Tenant would sign the Parking Letter.

Based on a review of the totality of the evidence before me, I am not satisfied, on a balance of probabilities, that parking was included as part of the rent. Rather, I find it more likely than not that the cost for parking was established as a separate parking agreement outside of the cost for rent of the basic living space. As I am satisfied that this Parking Letter is a separate agreement, I do not find that this would constitute a rent increase under the *Act*, and I dismiss the Tenant's claim on this issue in its entirety.

As the Tenant was partially successful in his claims, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I permit the Tenant to withhold this amount from the next month's rent.

Conclusion

As the cost for storage was determined to be an illegal rent increase, the Tenant is permitted to withhold the overpayments of \$25.00 per month from February 2019 off of the next month's rent. As well, the \$100.00 filing fee may be permitted to be withheld from this next month's rent as well. The Tenant's rent going forward will be the rent amount prior to the \$25.00 extra per month that was paid, barring any applicable rent increases that may have been issued since then that complied with the *Act*.

The Tenant's claim for an illegal rent increase due to parking is dismissed in its entirety.

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: June 10, 2020

Residential Tenancy Branch