



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, two witnesses for the Tenant (the “Witnesses”) and an agent for the Landlord (the “Agent”), all of who provided affirmed testimony. The Agent acknowledged being served with the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of Hearing, and the Tenant’s documentary evidence and raised no concerns regarding this service or my consideration of the Tenant’s documentary evidence. No evidence was submitted to the Residential Tenancy Branch (the “Branch”) or served on the Tenant by the Landlord or their agents in relation to this matter. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; only the relevant and determinative facts and evidence have been dealt with in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Issue(s) to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed term tenancy began on November 1, 2017, and was set to end on October 31, 2018. Although the tenancy agreement contained a move-out clause, the parties agreed in the hearing that the tenancy continued after the end of the fixed term. The tenancy agreement states that rent in the amount of \$2,250.00 is due on the first day of each month and that only water, heat, a stove and oven, a refrigerator, window coverings and garbage collection are included in rent. There was no disagreement between the parties that parking was not included as part of the tenancy agreement or the payment of rent.

The tenancy agreement also listed the Witness V.C. as a tenant, however, both the Tenant and V.C. stated in the hearing that V.C. moved out in November of 2019. Both parties agreed that V.C. and the Tenant made separate rent payments directly to the Landlord.

The Tenant argued that they had personally overpaid rent in the amount of \$1,065.00 between February 2018 – January 2019, as a result of being incorrectly charged for parking and sought recovery of this amount from the Landlord. The Tenant denied that they, the Tenant V.C. or any of the other occupants of the rental unit ever agreed to pay for parking as no parking spot was required by them. The Tenant called V.C. and their partner T.B. as witnesses in the hearing in support of this testimony. V.C. and T.B., who both agreed that they previously resided in the rental unit with the Tenant, stated that although they inquired with the Landlord about parking, ultimately they found a cheaper alternative in the area and as a result, they never entered into a parking agreement with the Landlord.

The Agent stated that one of the Tenants or both, attend the rental office to request a parking spot, charged at \$100.00 per month, and as a result, the Landlord began charging the Tenants a \$100.00 per month parking fee effective February 1, 2018. The Agent stated that parking can be added or withdrawn verbally by Tenants during their tenancies and that the Tenant immediately began paying this additional parking fee each month, clearly indicating that they were aware of the parking spot and the fee associated with it. The Agent pointed to rent and fee statements in the documentary evidence before me in support of this testimony. The Agent stated that as a result, the Tenant was not wrongfully charged for parking, no overpayment has occurred, and the Tenant is not entitled to the compensation sought.

The Tenant denied any knowledge of the parking fees until they received a rent arrears letter and fee statement from the Landlord in January of 2019, a copy of which is in the documentary evidence before me for consideration, and stated that it was purely accidental and coincidental that they began paying the extra \$100.00 per month in February of 2018.

Both parties agreed that the Tenant has not been charged for parking since January 2019.

Analysis

Based on the tenancy agreement in the documentary evidence before me and the testimony of the parties in the hearing, I find that parking was not included in either the tenancy agreement or the payment of rent. Having reviewed the rent statements from the Landlord submitted for my consideration by the Tenant, it is clear to me that rent in the amount of \$2,250.00 and parking in the amount of \$100.00 were charged separately by the Landlord each month.

Although the Tenant argued that their payment of the parking fees constitutes an overpayment of rent, I disagree. Based on the above, I find that the issue of parking fees is entirely separate from the issue of rent, as parking is not included in rent under the tenancy agreement and is charged separately from rent by the Landlord. As a result, I am not satisfied that the Tenant overpaid rent as a result of having been charged a parking fee or having paid for parking.

Section 13 of the *Act* sets out the standard terms for tenancy agreements and section 14 (2) of the *Act* states that a tenancy agreement may be amended to add, change or include a term, other than a standard term under section 13, provided both of the parties agree. Although the Witnesses provided testimony that they themselves did not acquire or use the parking stall, this testimony does not satisfy me that the Tenant did not procure the parking stall for themselves, their guests, or other occupants of the rental unit in February 2018.

Although there is no written parking agreement or amendment form, for the following reasons, I am satisfied that the parties effectively amended the tenancy agreement in February 2018 to include the provision of a parking stall for an added monthly fee of \$100.00. Although the Tenant stated that they accidentally and coincidentally began paying an extra \$100.00 per month to the Landlord effective February 2018 and that these payments were in no way related to parking, I find this assertion illogical and

contrary to both common sense and a reasonable interpretation of the facts, evidence, and testimony before me for consideration. As a result, I prefer the testimony of the Agent in this regard and find that the Tenant consented to the provision of a parking stall knowing that it would cost an additional \$100.00 per month and subsequently began paying this additional amount.

Based on the above I am not satisfied that the Tenant overpaid rent or was charged a parking fee without their knowledge or consent and I therefore dismiss the Tenant's Application, in its entirety, without leave to reapply.

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, 2020

Residential Tenancy Branch