Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL REALTY INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of $200.00 to dispute a rent increase related to parking and to recover the cost of the filing fee.

The tenant and a landlord agent, YK (agent) attended the teleconference hearing. The parties gave affirmed testimony and the parties were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service of documentary evidence during the hearing. I find the parties were sufficiently served as a result as both parties confirmed having been served with documentary evidence and having the opportunity to review that evidence prior to the hearing.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Did the tenant provide sufficient evidence to support that the landlord breached the Act by increasing monthly rent related to parking contrary to the Act?
- If yes, is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on October 15, 2008. The original monthly rent was $910.00 per month and was due on the first day of each month. Parking was crossed off the original tenancy agreement as not being included in the monthly rent. The parties agreed that monthly rent was currently $1,185.00 before parking.

The tenant admitted that they did not have a car when they first moved into the rental unit. The agent stated that they took over management from the previous landlord in 2015, which the tenant confirmed. The tenant claims that eventually they had a car and were paying $10.00 for parking per month. The tenant also stated that if they no longer needed parking, the rent would decrease $10.00 per month. The tenant is disputing a March 16, 2021 letter from the landlord advising the tenant that the parking fee is increasing to $20.00 per month effective May 1, 2021.

The tenant's position is that parking is included in the monthly rent and the agent vehemently disagrees that rent includes parking. The tenant then stated that they had an oral agreement with the previous property management company that parking was included in the monthly rent.

Analysis

Based on the above, and on a balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Firstly, the tenant admitted that they did not have a car when the tenancy began. Secondly, the written contract clearly has parking with a line through it, which I find indicates that the monthly rent does not include parking. If I were to accept the tenant's testimony that rent included monthly parking by way of a verbal agreement, it does not explain how rent would go down by $10.00 if the parking was no longer required. Specifically, if rent was increased by $10.00 for parking that is the new monthly rent amount, and in the matter before me, the parties agreed that rent was $1,185.00 **before parking**. Furthermore, with a separate parking agreement, whether verbal or in writing, the rent would not be impacted, and the parking would only be paid during the months where is parking is used. In the matter before me, the tenant is disputing a $10.00 increase in the parking fee and I find the letter from the landlord supports that the parking fee will be increased, not the monthly rent.

Finally, I find the parking was a separate agreement as it could not have been part of the original agreement as there was no parking amount listed and the tenant's car did not exist at the time the tenancy agreement was signed and was not a consideration in the monthly rent at that time as a result. Therefore, I find that parking is not included in

the monthly rent pursuant to the signed tenancy agreement and that a parking fee it is not subject to the rent increase provisions of the Act. As such, the tenant can decide if they want to pay the higher parking fee or find alternative parking.

A disputed verbal agreement does not outweigh a written tenancy agreement signed by both parties under the law. I have no evidence before me that the written tenancy agreement ever changed by consent of the parties and a disputed verbal agreement is of insufficient weight. Based on the above, I find the tenant has failed to provide sufficient supporting evidence in support of their application and has failed to meet all four parts of the test for damage and loss. Consequently, I find the tenants' claim has no merit and fails in its entirety. Therefore, I dismiss the tenants' application in full without leave to reapply due to insufficient evidence.

As the tenant's application has no merit, I do not grant the filing fee.

Conclusion

The tenant's application is dismissed in full without leave to reapply due to insufficient evidence.

The filing fee is not granted as the tenant's application has no merit.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 22, 2021

Residential Tenancy Branch