



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mindful Management and Laurel Street Apartments
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The tenant testified that he is not recording this dispute resolution hearing.

The tenant confirmed his email address for service of this decision.

The tenant testified that the landlord was served with a copy of this application for dispute resolution and evidence via registered mail on May 10, 2021. The tenant entered into evidence a Canada Post registered mail receipt confirming the above mailing. The tenant entered into evidence a Canada Post delivery report which states that the package was delivered on May 11, 2021. I find that the landlord was served

with the tenant's application for dispute resolution and evidence in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the tenant's submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2013 and is currently ongoing. Monthly rent in the amount of \$1,245.99 is payable on the first day of each month. A security deposit of \$425.00 and a pet damage deposit of \$600.00 were paid by the tenant to the landlord.

The tenant testified that the subject rental building is an apartment building and that before he moved into the subject rental property he lived in another unit in the same building. The tenant entered into evidence the previous tenancy agreement which started on June 1, 2011. The tenant testified that parking was not included in this tenancy agreement and he parked on the street.

The tenant testified that the landlord was completing renovations in the subject rental building and offered the tenant free parking as an incentive to move into a fully renovated unit at a higher rent. The tenant testified that he agreed, and the landlord assigned him parking stall #4 which he has been parking in since he moved into the subject rental property on August 1, 2013. The tenant entered into evidence the tenancy agreement that started on August 1, 2013, which is signed by both parties. Section 6 of the tenancy agreement states:

RENT AND FEES. Rent must be received by the landlord on or before the first calendar day of each month, unless the parties agree in writing in advance to a different date.

Rent	<u>\$1,100.00 per month</u>
Parking fees	
Other fees	<u>\$30.00 laundry</u>
TOTAL RENT AND FEES	<u>\$1,130.00 Park #4</u>

The tenant testified that in 2017 a new property management company was hired to manage the subject rental building and the landlord asked all the tenants in the building to sign new tenancy agreements. The tenant testified that the landlord informed the tenants that no changes were to be made to the terms of the tenancy agreements. The tenant testified that he signed the 2017 tenancy agreement which makes no notation regarding the free parking the tenant was granted in the 2013 tenancy agreement. The tenant testified that he did not pay parking fees from 2013 to 2017 and was not asked to.

The tenant testified that after signing the 2017 tenancy agreement which started on April 1, 2017, he continued to park in stall #4 and continued not to pay for that parking.

The tenant testified that in 2018 the landlord sent him a letter dated May 31, 2018 which states in part:

...This letter will serve as our official 30 Days Notification. Your new parking fee will be \$45.00 per month effective 07/01/2018 (July 1, 2018)...

The tenant testified that he responded to the above letter via letter on June 11, 2018. The June 11, 2018 letter was entered into evidence and states:

On May 31st 2018, you provided me with a letter regarding a new \$45 fee for parking and an increase of \$15.00 for laundry fee. At the beginning of my tenancy in 2013 parking was included as part of my monthly rent.... As my rent has already been increased by the maximum allowable amount as of May 1st, 2018, this new for of \$45.00 for parking to be effective July 1st 2018 and increase of \$15 for the laundry facilities violates section 42 and 43 of the Residential Tenancy Act and I do not consent to the increase.

The tenant testified that since he sent the above letter, the landlord has continued to pursue the tenant for parking fees. Further correspondence from the landlord evidencing same was entered into evidence.

The tenant testified that he is seeking a finding from the Residential Tenancy Branch that the landlord is not permitted to charge him for parking because it is included in his rent.

Analysis

All tenancy agreements between a landlord and a tenant with respect to a rental unit and residential property are subject to the *Act*, unless specifically exempted. The definition of “tenancy agreement” in section 1 of the *Act* includes tenancy agreements entered into orally, in writing, and by way of implied or express terms. Therefore, in this case, the parties are bound by the terms of their oral agreement and written agreement, including any implied or express terms. An implied term is a term of a tenancy agreement that was not necessarily set out in writing but was agreed to either orally or by the conduct of the parties.

Based on the undisputed testimony of the tenant and the 2013 tenancy agreement entered into evidence, which notes stall #4 and does not note any parking fees, I find that parking was included in the 2013 tenancy agreement. While this term is not explicit in the 2013 tenancy agreement, I find that it is at least an implied term which is evidenced by the tenant not paying for parking between 2013 and 2017 and the parking stall notation in the 2013 tenancy agreement. I find that the conduct of the landlord is not seeking parking fees for four years further evidences the implied term of parking being included in the rent.

I find that the conduct of the landlord, in continuing not to charge the tenant for parking after the 2017 tenancy agreement was signed is evidence that the implied term in the 2013 tenancy agreement carried over to the 2017 tenancy agreement, which is the last tenancy agreement signed by the tenant. I find that free parking is an implied term of the 2017 tenancy agreement.

I find that the landlord is not permitted to unilaterally change the terms of the tenancy agreement, including the implied term that parking is included in the rent.

Section 62(3) of the *Act* states:

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.

Pursuant to section 62(3) of the *Act* I order the landlord to comply with the implied term in the tenancy agreement that parking is included in the rent of the subject rental property. The landlord is not entitled to charge the tenant for parking.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

Conclusion

I order the landlord to comply with the implied term of the tenancy agreement that parking is included in the rent. The tenant is not required to pay extra for parking.

The tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

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: August 31, 2021

Residential Tenancy Branch