



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros Agencies Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDCT

Introduction

The tenant filed an Application for Dispute Resolution on July 16, 2021 seeking the landlord's compliance with the legislation and/or the tenancy agreement, and compensation for monetary loss. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on November 18, 2021.

Both parties attended the conference call hearing, and each confirmed they received the prepared documentary evidence of the other. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Issue(s) to be Decided

Is the landlord obligated to comply with the *Act*, the regulations, and/or the tenancy agreement, as per s. 62 of the *Act*?

Is the tenant entitled to compensation for money owed, pursuant to s. 67 of the *Act*?

Background and Evidence

The landlord provided a copy of the tenancy agreement in place between the parties. The tenancy started on July 1, 2012. The rent started at \$800 and both parties agreed the current amount of rent paid was \$916 monthly. Clause 3 of the agreement provides that certain items are included in the rent; however, this does not specify that parking is

included. Clause 6 shows no dollar amount entered in the space for parking fees; no amount is added to the monthly rent for parking.

The tenant's point in referring to the agreement specifically is that they never paid for parking and never asked to do so by the management that was in place when they started their tenancy. They referred to the Condition Inspection Report completed at the start of the tenancy; this shows parking was included. The tenant clearly stated they were "not okay" paying \$25 going forward and compared this to an exemption that acts as a party being "grandfathered in" when long-term policies change.

The landlord introduced the parking fee by memo to all tenants with parking on January 29, 2021. This was to be effective April 1, 2021, at the rate of \$25 per month. This initiative is to know a tenant's vehicle identification and associated spot. Additionally, there will be minor upgrades to the parking area.

The landlord sent a reminder in March, then addressed an individual letter to the tenant on March 31, 2021. This was in response to the tenant's letter of March 29 that set out their position on this matter. The landlord provided their interpretation of clause 3 of the tenancy agreement to say: "Parking is not checked to be included in the monthly rent." The tenant, with full intention of disputing, nevertheless paid the \$25 in July 2021.

In sum, the landlord's position is it was never explicitly agreed that there would *not* be a parking fee. The tenant's position is that parking *is* included in the rent amount and should be still honoured as such even at this stage in the tenancy.

Analysis

The *Act* s. 13 sets out the requirements for a tenancy agreement, and this specifies (f)(vi) which services and facilities are included in the rent. This agreement is not explicit on the point that parking is included. Relying on clause 6 alone, it is possible to infer that parking *was not* and *never could be* considered to be included in rent; however, the opposite interpretation is also possible where that space was left blank as if to show it could be filled in later.

To settle the matter, I consider that the tenant has had parking since the tenancy started in 2012 without a fee. I find it unreasonable that the landlord would 9 years later request a fee for parking. I find the tenant has the right to rely upon the actions of the landlord – those which have not changed for the bulk of this tenancy thus far – that

parking was provided as a term of the tenancy. I rely on the common law principle at play in this situation, where an assertion that contradicts previous actions cannot be relied upon. From this, I find the tenant has the right to rely upon the actions of the landlord – specifically, in *not* requiring a fee – that parking was provided as a term of the tenancy.

Because the tenant successfully made their point, I find they are entitled to recover the \$25 they paid previously for parking. I authorize the tenant to withhold the amount of \$25 from one future rent payment.

Conclusion

I find the tenant shall not pay parking fees going forward, and the landlord is thus compelled to comply with the term as set out in the tenancy agreement.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: November 18, 2021

Residential Tenancy Branch