Dispute Resolution Services

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 MNDCT, DRI, OLC, FFT

Introduction

The Tenants filed an Application for Dispute Resolution on August 17, 2021 seeking the Landlord's compliance with the legislation and/or the tenancy agreement, compensation for monetary loss, and recovery of the Application filing fee. They also disputed a rent increase above the amount allowed by law. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* on December 14, 2021.

Both parties attended the conference call hearing. The Landlord confirmed they received the prepared evidence of the Tenants and did not prepare evidence of their own. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter

On their completed Application form, the Tenants noted they had "not yet suffered any loss". In the hearing the Tenants clarified they indicated this ground for dispute resolution in anticipation of having their vehicles towed by the Landlord. As of the time of the hearing, the Tenants' vehicles were not towed. I dismiss this portion of the Tenants' Application, to exclude this ground from consideration where the Tenants have not suffered any monetary loss.

Issues 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*?

Were the Tenants subject to a rent increase that did not comply with Part 3 of the *Act*, and if so, are they entitled to a cancellation or said rent increase?

Are the Tenants entitled to reimbursement of the Application filing fee?

Background and Evidence

The Tenants provided a copy of their tenancy agreement, in place since they signed that document in 2003. The current rent amount as of the time of the Application was $1,221. 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 Tenants described the parking situation that was in place with the previous Landlord who assigned parking spots to building residents. This was considered to be included in the monthly rent amount. The Tenants had two vehicles (as they still do), with specified numbered stalls, and they used these parking spots for 11 years.

The Tenants submitted a copy of the Landlord's letter dated July 9, 2021 in which the Landlord notified them of new parking fees per stall effective October 1: uncovered $40 and covered $60. With that letter the Landlord included an uncompleted parking agreement with the terms and conditions set out on that same document.

In their Application, the Tenants set out that the current Landlord is seeking an improper rent increase. This is with the imposition of the parking fees in addition to the monthly rent. This is an imposed rent increase without use of the proper Residential Tenancy Branch form, and contravening s. 41 and s. 42 of the *Act*.

Further, the Tenants submit that s. 27 of the *Act* applies, where a landlord must reduce rent in an amount equal to the termination of a non-essential term of the agreement.

On both these points, the Tenants based their rationale on their finding of an earlier Residential Tenancy Branch dispute resolution decision where the Arbitrator made these findings in a similar scenario.

The Tenants submit the Landlord "can separate out a parking agreement, but then that would entail a rent reduction." They have never paid parking fees in the 18 years of their tenancy.

New owners were in place since 2014, and there was never any comment about parking. For these last 7 years with the present owners the original agreement continued.

In their response, the Landlord noted that parking was not included as part of rent in the agreement as it stands. They submitted no "service or facility" is being removed here, so there is no requirement for a specific authorized form. Additionally, an arbitrator is not bound to follow a prior dispute resolution decision. In sum, they provided that parking is not part of the tenancy agreement in place, thus "leaving it open to be a fee charged at a later date."

The Landlord also described how new tenants all have to pay for parking as an additional fee. There is a need for income associated with parking, for the costs of snow removal, line painting and other maintenance.

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. I find the agreement in place between the parties here 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 Tenants have had parking since the tenancy started in 2003 without fees. I find it unreasonable that the Landlord would 18 years later request a fee for parking. I find the Tenants have the right to rely upon the actions of the Landlord – those which have not changed for the bulk of time 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 Tenants have the right to rely upon the actions of the Landlord – specifically, in *not* requiring separate parking fees – that parking was provided as a term of the tenancy.

As an Arbitrator, I am not bound by previous dispute resolution decisions. I find the present situation is *not* that of an imposed rent increase, as the Tenants submitted. I find there was no messaging from the Landlord to the Tenant that rent was increasing solely for the reason of parking. I dismiss this portion of the Tenants' Application for this reason.

Considering compliance with the Act, should the Landlord choose to terminate parking on the basis that Tenants are not paying new fees, an equivalent reduction in rent must be in place, to

compensate the Tenants for loss of that service/facility. The Landlord must comply with s. 27 of the *Act*. For this, the Landlord is required to use the approved form, with 30 days' written notice.

Because the Tenants are successful in this Application, I find they are entitled to recover the Application filing fee. I authorize the Tenants to withhold the amount of $100 from one future rent payment.

Conclusion

I find the Tenants 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: January 4, 2022

Residential Tenancy Branch