



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros Agencies (Rentals)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing dealt with a tenant's application for orders for the landlord to comply with the Act, regulations, or tenancy agreement.

Both the landlord's agent and the tenant appeared for the hearing. The parties were affirmed.

I confirmed the parties had exchanged their respective hearing materials with each other and I admitted their materials into evidence for consideration in making this decision.

The hearing process was explained to the parties and the parties had the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Issue(s) to be Decided

Has the tenant established that the landlord is in violation of the Act, regulations, or tenancy agreement with respect to an amount being charged for parking?

Background and Evidence

The one year fixed term tenancy started on December 1, 2016 and has continued on a month to month basis thereafter. The tenant paid a security deposit of \$575.00.

The tenancy agreement reflects the following under term 3:

3. **Rent:**

(a) Payment of the Rent:			
The tenant will pay the rent of	amount in \$'s \$ 1150 ⁰⁰	monthly plus parking	\$ 15 ⁰⁰
		= Total	\$ 1165 ⁰⁰
to the landlord			
on the first day of the rental period, which is the 1st of each month subject to rent increases given in accordance with the RTA. The tenant must pay the rent on time. If the rent is late, it is considered a breach of contract, and the landlord may issue a Notice to End a Residential Tenancy to the tenant, which may take effect not earlier than 10 days after the date the Notice is given.			
(b) Pro-rated rent of (if applicable)	amount in \$'s \$	for the month of	month/ year 1
Note: tenancies end the last day of the month regardless of start date.			
(c) What is included in the rent: (check only those things that are included and provide additional, information if needed) The landlord must not take away or make the tenant pay extra for a service or facility that is already included in the rent, unless a reduction is made under Section 27 (2) of the RTA.			
<input checked="" type="checkbox"/> Heat	<input checked="" type="checkbox"/> Stove	<input type="checkbox"/> Washer	<input type="checkbox"/> Free Parking for _____ vehicle(s)
<input checked="" type="checkbox"/> Hot Water	<input checked="" type="checkbox"/> Refrigerator	<input type="checkbox"/> Dryer	<input type="checkbox"/> Other _____
<input checked="" type="checkbox"/> Water	<input type="checkbox"/> Dishwasher	<input checked="" type="checkbox"/> Window Coverings	<input type="checkbox"/> Other _____
<input type="checkbox"/> Electricity	<input type="checkbox"/> Cablevision	<input type="checkbox"/> Garbage Collection	<input type="checkbox"/> Other _____

The tenancy agreement indicates there is no addendum or additional terms.

The facts of this case are undisputed and I summarize the relevant facts below:

When the tenancy started the tenant had a vehicle and parked it in a parking spot on the property, in exchange for payment of \$15.00 per month to the landlord. In October 2017 the tenant sold her vehicle and went without a vehicle until April 2020. During the period of time the tenant did own a vehicle she did not use a parking spot on the property and did not pay the landlord anything for parking.

During this tenancy, the landlord has issued Notices of Rent Increase to increase the rent, excluding any charge for parking, in accordance with the rent increase limitations set out in the Act.

When the tenant purchased a vehicle in April 2020, she parked it on the street initially. The tenant requested a parking spot on the property and one became available on July 1, 2020. The tenant started parking her vehicle on the residential property starting July 1, 2020 and started paying the landlord \$15.00 per month to do so. On October 28, 2020 the manager presented the tenant with a "Parking Agreement" to sign, which the tenant did, and it indicates their agreement was retroactive to July 1, 2020. Below, I have reproduced an excerpt from the Parking Agreement (names and signature obscured by me for privacy purposes):

TERMS & CONDITIONS:

1. TENANTS are required to:
 - (a) Read and follow the terms and conditions herein:
2. This agreement may be terminated by either party with one calendar month's written notice.
 - (a) Parking charges will continue until the TENANT gives proper written notice of termination.
 - (b) Calendar month is from the 1st day of the month to the last day of the same month.
 - (c) Notice can be given by letter, fax or email.
3. Parking charges are payable in advance by the first day of each calendar month.
4. Parking charges are for the use of a vehicle parking space only. [REDACTED] is not responsible or liable for any injury, death, property damage, theft or disappearance occurring in, on or about the parking facility to the TENANT or anyone claiming under or through the TENANT.
5. TENANT is subject to the terms and conditions displayed on all signs in the parking facility.
6. Parking rates are subject to change with one month's written notice.
 - (a) Notice can be given by letter, fax or email.
7. The TENANT cannot assign or transfer this agreement.

My signature confirms that I have read and understood
Parking Terms and Conditions. Failure to comply with
Parking Terms and Conditions will result in having your
vehicle towed at your expense

[REDACTED] Property Manager

Tenant Signature
[REDACTED]

EFFECTIVE

July 01, 2020 .

Parking Agreement -

In July 2021 the tenant received a notice posted to her door that the parking charge would increase from \$15.00 per month to \$40.00 per month starting October 1, 2021.

The tenant has paid the \$40.00 per month parking charge, in addition to her monthly rent of \$1239.00 for the rental unit.

Tenant's position

The tenant submits that parking is provided as part of her rent obligation, as set out in Term 3 of the tenancy agreement. As such, the parking charge is limited to \$15.00 per month as provided under the tenancy agreement or subject to the annual rent increase permitted under the Act.

The tenant argued that the tenancy agreement remains in effect for the duration of the tenancy, meaning parking is as provided under the tenancy agreement and not subject to changing or ending.

The tenant submits that the inclusion of parking in rent and limitation on rent increases is provided under the Act to protect tenants from outrageous rent increases such as this.

The tenant acknowledged that she understands that she is at liberty to terminate her use of the parking spot and stop paying for parking at anytime.

The tenant pointed to another decision issued by the Residential Tenancy Branch whereby the Arbitrator found that parking was a service or facility included in rent and subject to the rent increase limitations of the Act.

Landlord's position

The landlord submitted that parking was not part of rent under the tenancy agreement and that is further supported by the tenant's choice to give up her parking spot and not pay any amount for parking, which she did between 2017 and 2020.

The terms of a tenancy agreement are subject to change so long as it is in accordance with the Act, such as rent increases, among other things, and the legislation supersedes a tenancy agreement.

The landlord was not obligated to restore parking to the tenant after the tenant gave up her parking spot in 2017 and the tenant had to request another parking spot after the tenancy started in 2020. As such, a new agreement was reached with respect to parking.

As for the amount of the parking rate increase, the landlord stated that parking fees remained the same for many years; however, there are maintenance costs associated with parking lots and the owners intend to resurface the parking lot. As such, the owners sought to increase parking fees. Starting in the spring of 2021, new tenants were being charged \$40.00 per month for a parking spot. Existing tenants who were using the parking lot were given three months advance notice of the increase, which is more notice than the landlord was required to give under the Parking Agreement. The Parking Agreement, which the tenant agreed to, permits the landlord to increase the parking rate and for the tenant to terminate the agreement with one month of advance notice.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

The tenancy agreement provides that there is no free parking provided to the tenant as part of her monthly rent payment. Nor is there any indication as to how many parking stalls the tenant would be provided, if any, under the tenancy agreement. However, the tenancy agreement provides for a parking charge of \$15.00 per month and this is consistent with the amount the landlord was charging for one stall.

The Act defines “services and facilities” to include parking spaces. At issue is whether the landlord may increase the amount charged for parking. The difficulty or complication regarding amounts that may be charged for parking (and other services and facilities) arises because the Act defines “rent” to include money payable for services and facilities but the Act and the Residential Tenancy Regulations also provide that a “fee” may be charged for a service or facility, including parking.

The amount of “rent” payable by a tenant is subject to rent increase limitations in Part 3 of the Act; whereas, “fees” are not subject to rent increase limitations of Part 3 of the Act.

Section 1 of the Act defines “rent” as follows:

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

(a) a security deposit;

(b) a pet damage deposit;

(c) a fee prescribed under section 97 (2) (k) [regulations in relation to fees];

[My emphasis underlined]

Section 97(2)(k) of the Act provides that regulations may be created to with respect to fees a landlord may charge a tenant. Section 7 of the Residential Tenancy Regulations (the Regulations) provides for non-refundable fees a landlord may charge a tenant.

Section 7(1)(g) of the Regulations provides that a landlord may charge a tenant:

a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

[My emphasis underlined]

Section 7(1)(g) of the Regulations does not impose a limitation on the amount the landlord may charge as a fee. As such, I conclude that the landlord may charge a fee at an amount set by the landlord where the tenant requests the service or facility and it was not required to be provided to the tenant under the tenancy agreement.

The landlord has increased the amount charged to the tenant for parking in a manner that is consistent with the landlord treating the charge as a fee and not in a manner that is consistent with increasing the rent. The tenant objects to the landlord's treatment of the parking amount as a fee and argues the charge is rent. Thus, I must determine whether the parking charge is actually "rent" or a "fee" and to do so I must determine whether parking spot was/is a service or facility required to be provided to the tenant under the tenancy agreement as part of her "rent".

In the case before me, upon consideration of everything before me, I find, on a balance of probabilities, that both parties have conducted themselves in a manner that is consistent with the parking charge being a fee. I make this determination considering the following factors:

- The tenancy agreement provides a separate and distinct amount for monthly "rent" from that for monthly "parking".
- The amount of the security deposit was limited to an amount that is one-half of the "rent" amount, exclusive of the total that includes parking.
- The tenancy agreement provides that no free parking is to be provided to the tenant.
- The tenancy agreement does not indicate that the tenant would be provided parking for any number of vehicles or stalls.
- When the tenant no longer required or wanted a parking spot in October 2017 she exercised her own choice to give up that parking spot and stop paying the

landlord the \$15.00 charge associated to the use of a parking spot. A tenant's monthly rent obligation does not fluctuate depending on whether a tenant is using a service or facility provided to them as part of their rent.

- Years after giving up a parking spot on the property, when the tenant wanted a parking spot again, the tenant had to request one of the landlord and wait for one to become available.
- The landlord has increased the monthly rent for the rental unit periodically, increasing the monthly rent from \$1150.00 to \$1239.00 in various increments over the years, but the rent increase calculation was only based on the monthly rent, exclusive of the parking charge. If the parking charge was rent then the total monthly payment, including parking would have been subject to the incremental rent increases and payable even if the tenant was not using the parking spot.
- The parties entered into a separate parking agreement, orally and then in writing.

As for the previous dispute resolution decision the tenant presented in support of her position, it is important to point out that section 64(2) of the Act provides:

(2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

I have reviewed the decision submitted by the tenant, and although I am not bound by another dispute resolution decision, I find that it is distinguishable from the dispute before me now. In that previous decision, a finding was made that parking was a service or facility provided as part of rent for reasons that do not apply in this case, such as:

- The tenancy agreement in that other dispute provided that the tenant was to be provided parking for one vehicle under the tenancy agreement whereas in the case before me there is no indication that any number of parking spots would be provided to the tenant under the tenancy agreement.
- The parties involved in that other dispute did not execute a separate parking agreement like the parties did in this case.
- The tenant involved in the previous dispute had always had use of a parking spot throughout his tenancy whereas the tenant in this case did not.
- The tenant involved in the previous dispute had not ever requested use of a parking spot after the tenancy started whereas the tenant in this case did.

In light of all of the above, I find the amount the landlord is charging the tenant to park in the parking lot is a prescribed fee for a service or facility the tenant requested after the start of the tenancy and it is not rent. As such, it is not subject to rent increase limitations imposed under Part 3 of the Act and I find I am unsatisfied that the landlord has violated the Act, regulations, or tenancy agreement. Therefore, I dismiss the tenant's application in its entirety.

Conclusion

The tenant's application is dismissed in its entirety.

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: February 02, 2022

Residential Tenancy Branch