



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Northland Asset Management Co.
Limited and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant disputing a rent increase and seeking to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established that rent has been increased contrary to the law?

Background and Evidence

The tenant testified that a tenancy agreement was made for a tenancy to commence on November 1, 2016, then the tenant moved to another rental unit within the same complex in April, 2019 and still resides there. Rent is currently \$1,116.00 payable on the 1st day of each month and there are no rental arrears. At the outset of the first tenancy the tenant paid a security deposit to the landlord, and when the second tenancy began the rent was higher and the tenant topped-up the security deposit to \$550.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex.

The tenant further testified that the landlord provided a letter stating that as of January 1, 2022 current tenant vehicles parked in the underground garage will be subject to a \$75.00 per month parking fee. A copy of the letter has been provided for this hearing and it is dated September 22, 2021. However, the Addendum to the tenancy agreement states: "Parking for one vehicle per suite is provided on first come basis, no Motor homes, RV's Trailers or Vehicles 3000 GVW or larger are not allowed." A portion of the Addendum has been provided by the tenant for this hearing.

The landlord's agent testified that the tenant is currently on a month-to-month tenancy. The tenant moved into suite 304 on November 1, 2016, and the tenancy agreement states that after 1 year it reverts from a fixed-term tenancy to a month-to-month tenancy. In October, 2016 the tenant paid a security deposit of \$425.00.

On April 15, 2019 the tenant moved to suite 410 and paid another \$175.00 toward the security deposit, so the landlord currently holds a security deposit in the amount of \$550.00, and the new tenancy agreement is on a month-to-month basis. Rent was \$1,100.00 per month at the beginning of the new tenancy, which was increased to \$1,116.00 per month effective January 1, 2022.

The landlord gave 3 month's notice on September 22, 2021 that a parking fee would be charged effective January 1, 2022. It is not a rent increase.

Analysis

Firstly, I agree that a parking fee is not a rent increase. However, the *Residential Tenancy Act* specifies that:

- 27** (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

In this case, although I am not convinced that the underground parking is essential or a material term of the tenancy agreement, the landlord may not terminate a service or facility if it is a material term, and if it is not a material term, the landlord may terminate the service or facility if the landlord reduces rent to the equivalent of the value of the service or facility. In other words, if the landlord removes the tenant's right to park for free in the underground parking, the landlord must reduce the rent accordingly.

Pursuant to my authority under Section 62 of the *Act*, I order that the landlord comply with the *Act* as set out above.

I further order that if the tenant has paid the additional parking fee, the tenant be permitted to reduce rent for future month(s) until that sum is realized.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant in that amount and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, I hereby order the landlord to comply with the *Residential Tenancy Act*, and that the landlord may not terminate the free underground parking unless the landlord gives 30 days written notice and reduces rent in the amount that is equivalent to the reduction of the value resulting from the termination or restriction of the parking area.

I further order that if the tenant has paid the increase for parking, the tenant may reduce rent until that sum is realized.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that

the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: March 14, 2022

Residential Tenancy Branch