



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, FFT**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act ("Act") for orders as follows:

- Requiring the landlord to comply with the Act, regulation and/or the tenancy agreement
- reimbursement of the filing fee pursuant to section 72

Both parties attended the hearing with the landlord represented by AL, while the tenant was represented herself.

Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord acknowledged receipt of the dispute notice dated June 7, 2022, and tenant's evidence package. The tenant acknowledged receipt of the landlord's evidence package. Service is satisfied in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation and/or the tenancy agreement?
2. Is the tenant entitled to reimbursement of her filing fee?

Background and Evidence

The tenancy commenced on January 1, 2021 on a one year fixed term and continued thereafter on a month to month basis. Rent was \$1,750.00 per month and a security

deposit of \$875.00 and a pet deposit were paid and are currently held in trust by the landlord. An addendum "Addendum B, Special Terms and Conditions" to the tenancy agreement was signed on February 8, 2021 to include a parking stall for an additional \$60.00 per month. The tenant still occupies the residence.

Both parties agree that:

- The tenant received a rental increase on January 1, 2022, of the maximum amount allowable under the legislation.
- She currently pays \$1,776.00 per month in rent and an additional \$60.00 per month in parking.
- On May 13, 2022, the tenant received written notice of an increase in parking fees from \$60.00 per month to \$100.00 per month. The effective date of the notice was July 1, 2022.
- The original tenancy agreement and parking addendum were negotiated with a previous landlord. The current landlord took ownership of the rental property at the end of February 2021.

The tenant submitted that the parking addendum did not form a part of the initial tenancy agreement because parking was not available at the time the tenancy commenced. The tenant was placed on a waiting list, and when parking became available the parking addendum was signed and the intention was that it become part of the tenancy agreement. Because of that, the parking fee is subject to the same rental increase restrictions as rent under the Act. Additionally, other tenants were not required to pay an increase for their parking. She currently pays one amount of \$1,836.00 per month and that amount includes both the rent and the parking fee.

The landlord' agent AL stated that the parking fee increase occurred because parking was not part of the original tenancy agreement and was separate. They only increased parking fees for tenants who had a separate parking agreement. Tenants who had parking included as part of their rent did not receive the same notice of a parking fee increase.

Analysis

Is the Parking Fee Rent?

There are two applicable definitions in the Act:

"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]*;

"service or facility" includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:

- (d) parking spaces and related facilities;

The definition of rent includes money paid for services or facilities. Services and facilities include parking. Even though the parking agreement is a separate document from the original tenancy agreement, it is entitled "Addendum B", which is evidence that the parties intended it to be an addendum to an original document, the tenancy agreement. I find that the evidence establishes that the parking agreement forms part of the entire tenancy agreement and amends the tenancy agreement to reflect the provision of an additional service or facility. The addendum required additional money to be paid for that service or facility (parking), which meets the definition of rent under the Act. Even if the parking agreement does not form part of the tenancy agreement, I find that the parking fee still meets the definition of "rent" under the Act and is subject to the rules under the Act respecting rent increases.

Does the Rent Increase in the Form of a Parking Fee increase Comply with the Act?

There is no dispute that the tenant's rent increased in January 2022 to the amount allowable under the Residential Tenancy Regulation ("Regulation"). Section 42 of the Act outlines when and how rent increases can occur:

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

(b)if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2)A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3)A notice of a rent increase must be in the approved form.

(4)If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Section 22 of the Regulation outlines how rent increases are to be calculated:

22 (1)In this section, "**inflation rate**" means the 12 month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a rent increase takes effect.

(2)Repealed. [B.C. Reg. 184/2022, Sch. 2, [s. 1](#).]

(3)For the purposes of section 43 (1) (a) of the Act, in relation to a rent increase with an effective date on or after January 1, 2019, a landlord may impose a rent increase that is no greater than the amount calculated as follows:

percentage amount = inflation rate.

The parties agree that a lawful rent increase occurred in January 2022. It does not appear that in applying the legislated formula that the landlord included the additional parking fee of \$60.00.

Sections 23 and 23.1 of the Regulation permit the landlord to apply for an additional rent increase in certain enumerated circumstances. I do not have an application by the landlord for a rent increase before me.

As there has already been a lawful rent increase in 2022, any further purported rent increase by the landlord must be done through an application by the landlord. A rent increase without an application and order does not comply with the Act or the Regulation.

As the tenant was successful in her application she is entitled to the reimbursement of her filing fee.

Conclusion

I order that the landlord comply with the Act and the Regulation in imposing rent increases on the tenant.

The tenant is entitled to reimbursement of the filing fee of \$100.00 which she can withhold from a future month's rent on **ONE** occasion.

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: October 04, 2022

Residential Tenancy Branch