



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTHLAND ASSET MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PSF, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act and to recover the cost of the filing fee.

The tenant attended the hearing; however, the landlord did not attend. The tenant was affirmed.

The tenant stated he served the landlord with his application for dispute resolution and Notice of Hearing by registered mail on November 2, 2022. The tenant provided the Canada Post receipt containing the tracking number to confirm this mailing.

I accept the tenant's evidence and I find that the landlord was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

The tenant was provided the opportunity to present his evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the evidence are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to parking apart from a separate parking agreement and recovery of the cost of the filing fee?

Background and Evidence

The tenant filed a written tenancy agreement showing the tenancy began on December 1, 2012, for a monthly rent of \$890. The tenant said the current monthly rent was around \$1080. The tenant was not sure of the exact figure as his wife handles paying the monthly rent.

The issue raised by the tenant was described in his application as follows;

*(*landlord name*) has notified all tenants in this building that they will be required to sign a parking agreement and pay an additional parking fee of \$75.00 per month effective date November 1st. 2022. I have personally resided in this building for almost 11 years with a designated parking stall which came at no additional costs until now. Original tenancy agreement does not indicate that parking is provided but it also clearly indicates that there is no additional costs for parking.*

[Reproduced as written except for anonymizing personal information to protect privacy]

The tenant submitted that they were notified by letter from the landlord, dated September 19, 2022, that they were no longer able to provide reserved parking without a charge. Further, beginning November 1, 2022, all parking stalls at the property will be by reservation only. Filed in evidence was the letter.

The tenant testified that he had attempted to negotiate this issue with the landlord, as they had done for other tenants, but the landlord would never negotiate the matter with the tenant.

The tenant confirmed that when he moved into the rental unit, he was assigned a reserved parking stall, #38. In addition, everyone else moving in was assigned a specific parking stall and the tenants were instructed by the landlord that they were to park only in their assigned parking stall or they would be towed.

The tenant submitted there has never been a cost or separate agreement for parking since the tenancy began.

Additional evidence filed by the tenant included communication with and from the landlord and a picture of his parking stall, indicating parking spot #38 was reserved and subject to 24-hour towing.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

I have reviewed a copy of the written tenancy agreement. Under the section of RENT, the landlord marked what was included in the monthly rent. The space provided for a parking fee had a single, handwritten upward line, which indicated there was no fee. In the checkbox next to parking for “_____ vehicles”, there was a faint indistinct mark. I was unable to determine if an upward line was marked or the number 1 was written.

I find this section of the written tenancy agreement was inconclusive. However, the undisputed evidence is that since the tenancy began on December 1, 2012, the tenant has had parking at no additional charge by way of a reserved and assigned parking stall. Further, the undisputed evidence is that there has never been a separate parking agreement.

In this case, I find the legal principle of ‘estoppel’ applies to this application.

Estoppel is a rule of law that states when one party, the landlord here, by act or words, gives the other party, the tenant here, reason to believe that a certain set of facts upon which the other party takes action, the first party (landlord) cannot later, to their benefit, deny those facts or say that their earlier act was improper. The rationale behind estoppel is to prevent injustice owing to inconsistency.

I find the tenant has been assigned parking stall #38 since the beginning of the tenancy and as a result, pursuant to section 62 of the Act, I find it reasonable to conclude the tenant’s parking is a service or facility provided for by the landlord, at no extra cost. Therefore, I find the parking facility was included in the tenant’s total monthly rent as a material term of the tenant’s tenancy agreement.

Therefore, I find that the landlord is now estopped from requiring a separate parking agreement or a parking fee.

Pursuant to section 62(3) of the Act, I make the following order against the landlord:

I ORDER the landlord to cease their attempts to require the tenant to sign a separate parking agreement or charge for parking.

I ORDER the tenant keeps the use of his parking space (#38) at no cost to the tenant until the tenancy ends in accordance with the Act.

As the tenant's application was successful, I grant the tenant the recovery of the \$100 filing fee pursuant to section 72 of the Act. **I authorize** the tenant a one-time rent reduction in the amount of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

The tenant's application is granted in the above terms.

The tenant has been granted a one-time rent reduction of \$100 from a future month's rent for recovery of the filing fee for this application.

The landlord must not charge the tenant for parking for the remainder of the tenancy.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: December 01, 2022

Residential Tenancy Branch