



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

OLC FFT

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution ("Application") under the Residential Tenancy Act (the "Act") for:

- an order for the Landlord to comply with the Act, *Residential Tenancy Regulations* ("Regulations") and/or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

Three of the Landlord's agents ("NC", "MB" and "GM") and the Tenant attended the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I informed the parties that the *Residential Tenancy Branch Rules of Procedure* ("RoP") prohibit persons from recording dispute resolution hearings and, if anyone was recording the hearing, to immediately stop recording the proceeding.

The Tenant stated he served the Notice of Dispute Resolution Proceeding and his evidence (collectively the "NDRP Package") on the Landlord by email but he could not recall the date of service. GM stated the Landlord received the NDRP Package by email. The Tenant did not submit any evidence that the Landlord had consented to service of documents under the Act by email. However, as the Landlord received the NDRP Package, I find the NDRP Package was sufficiently served pursuant to section 71(2)(b) of the Act.

NC stated the Landlord served the Tenant with its evidence by registered mail on February 1, 2023. NC submitted the Canada Post tracking number to corroborate her testimony. The Tenant acknowledged receipt of the Landlord's evidence. I find the Tenant was served with the Landlord's evidence pursuant to the provisions of section 88 of the Act.

Issues to be Decided:

Is the Tenant:

- an order that the Landlord comply with the Act, Regulations and/or tenancy agreement?
- recover the filing fee for the Application from the Landlord?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application are set out below.

NC submitted into evidence a copy of the signed tenancy agreement, dated March 25, 2007, between the Landlord and Tenant. The tenancy agreement states the tenancy commenced on May 1 2007, for a fixed term ending October 30, 2007, with rent of \$730.00 for “basic living space”. The Tenant was required to pay a security deposit of \$365.00 by March 25, 2007. NC stated the Tenant paid the security deposit. The parties agreed the current rent is \$1,036.00 per month.

The Tenant stated he received a letter, dated November 7, 2022, from the Landlord that stated that he owed \$450.00 for three months parking, at \$150.00 per month. The Tenant stated a parking stall was always included in his rent. The Tenant stated that the resident manager was unable to assign him a parking spot at the time he entered into the tenancy agreement and, as a result, the line appearing after parking in paragraph 3 of the tenancy agreement was left blank. The Tenant stated he was seeking an order for the Landlord comply with the terms of the tenancy agreement that he argued included parking as part of the monthly rent for the rental unit since the tenancy commenced.

NC stated parking was not included with the rent for the tenancy. NC pointed to paragraph 4 of the tenancy agreement that states:

6. **RENT:** The tenant shall pay the rent to the landlord in advance on or before the first day of each month.

Basic Living Space	\$	<u>730.00</u>		
Parking	\$	_____	(_____)	Specify
Other	\$	_____	(_____)	Specify
TOTAL	\$	_____		

NC submitted into evidence a copy of a letter ("Letter"), dated April 23, 2007, from the Landlord to the Tenant that stated in part:

I wish to inform you that your rental amount for [apartment number and name of building] will be \$730.00 per month with an additional \$25.00 per month for parking at [name of adjoining property]. This makes a total monthly rental of \$755.00.

A pro-rated rent will be charged to you from April 20, 2007 to April 30, 2007. This is levied at \$24.33 per day x 10 days for a total of \$243.30 for April's rent.

NC stated it was clear from the tenancy agreement and the Letter that the rent for the rental unit was \$730.00 and that the parking was a separate charge of \$25.00. NC stated that, since the tenancy commenced, rent increases have always been calculated on the base rent of \$730.00 when the tenancy commenced in 2007 until now when the rent is \$1,036.00 per month.

Analysis

Rule 6.6 of the RoP states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on Rule 6.6, the Tenant has the onus to prove his case on a balance of probabilities.

Section 58(1) of the Act states:

- 58(1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:
- (a) rights, obligations and prohibitions under this Act;
 - (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to
 - (A) the tenant's use, occupation or maintenance of the rental unit, or
 - (B) the use of common areas or services or facilities.

Based on the evidence before me, I find parking was not a service or facility that was Although the Tenant stated the resident manager was unable to assign him a parking stall at the time he signed the tenancy agreement, the resident manager could nevertheless indicated on the tenancy agreement that the Tenant was entitled to a parking stall for \$25.00 per month. The Letter states the rent was \$730.00 per month with an *additional* \$25.00 per month for parking. NC disputed the Tenant's claim that the parking stall was included as part of the rent in the tenancy agreement. The Tenant did not dispute the Landlord's testimony that rent increases on the rental unit were calculated starting with the \$730.00 monthly rent specified in the tenancy agreement and not on the \$755.00 per month stated in the Letter. As such, I find the Tenant has not proven, on a balance of probabilities, the right to parking was included as a service or facility that was included in the tenancy agreement.

Based on the foregoing, I find that the Application is not in respect a dispute involving the rights and obligations under the terms of the tenancy agreement, or the Tenant's use, occupation or maintenance of the rental unit, or the use of common areas or services or facilities that are included as part of the tenancy agreement. As such, I find that I do not have jurisdiction to hear the Application under section 58(1) of the Act.

I dismiss the Application in its entirety without leave to reapply.

Conclusion

I find I do not have jurisdiction to hear the Application.

The Application is dismissed in its entirety without leave to reapply.

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: April 8, 2023

Residential Tenancy Branch