



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding TRANSPACIFIC REALTY ADVISORS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, DRI, OLC, FFT

Introduction

On January 11, 2023, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to dispute a rent increase pursuant to Sections 41 to 43 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. M.B. and S.A. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package, including some evidence, to the Landlord by registered mail on January 19, 2023, and additional evidence was served by registered mail on April 19, 2023. M.B. confirmed that the Landlord received these packages. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Tenant’s Notice of Hearing and evidence packages. As such, I have accepted this evidence and will consider it when rendering this Decision.

M.B. advised that the Landlord's evidence was served to the Tenant by registered mail on April 24, 2023, and the Tenant confirmed that he received this package the next day. As service of this evidence complied with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

During the hearing I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As it appeared as if the Tenant was confused, and likely conflated the alleged rent increase issue with the parking dispute, I advised the Tenant that this hearing would primarily address the claim with respect to the parking spot, and that his claims regarding the rent increase and monetary compensation would be dismissed with leave to reapply, if these were even an issue.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, 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 an Order to comply?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2000, that the rent was currently established at \$1,689.00 per month, and that it was due on the first day of each month. A security deposit of \$535.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Tenant advised that as per the signed tenancy agreement, outdoor parking for one vehicle was included as a term of the tenancy, and that this was included in the rent. He testified that he never had a separate agreement for this parking. He then advised that he “upgraded” his parking situation by paying \$15.00 per month for an underground parking stall, and that he initiated this undocumented parking agreement in 2011. He referenced a Notice of Rent Increase form, submitted as documentary evidence, to demonstrate that his rent was increased to \$1,360.00 per month, plus a \$15.00 parking fee, that was effective for August 1, 2012. However, he insisted that this \$15.00 is included in the rent, and he acknowledged that he paid this extra \$15.00 per month.

He then testified that the Landlord took over management of the rental unit in mid-2018, and that he provided the Landlord with post dated cheques, but the Landlord implemented an additional \$15.00 increase in the parking fee. He stated that he did not dispute this as “things happened in life and he forgot about it”, and that he simply gave the Landlord a cheque in the amount of \$180.00 to cover this increase for the year. Despite the additional parking fee being listed separately in the Notice of Rent Increase forms, it is his position that there is no clear indication that parking is separate from rent.

He advised that the Landlord implemented an increase in the parking amount to \$40.00 per month in January 2023, and it is his position that the Landlord is overcharging for this amount.

M.B. referred to the Tenant’s rent ledger, submitted as documentary evidence, when the Landlord took over management of the rental unit. She noted that the rent and the parking fee was always separated. She then referred to the Notice of Rent Increase form effective for December 1, 2018, where it is clearly indicated that rent and parking were completely separate. It is the Landlord’s position that there clearly was a separate parking agreement for this underground parking spot that the Tenant elected to move to in 2011.

S.A. referred to the more recent Notice of Rent Increase forms, submitted as documentary evidence, where there is not a space to indicate the parking fee. However, she cited the ledger which indicated that the rent and parking amount were separate. She then referenced the letter to the Tenant, dated September 27, 2022, informing the Tenant that the parking fee will be increased to \$40.00 per month effective for January 1, 2023.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Tenant's claim that the parking was included as part of the rent, I note that he confirmed that an outdoor parking spot was included as a term of his tenancy originally, and that he initiated a separate parking agreement to "upgrade" his parking situation in 2011 by paying an extra \$15.00 per month for an underground parking spot. He then acknowledged that he continued to pay this additional \$15.00 per month until the Landlord increased this a further \$15.00 per month in 2018. However, he paid this amount as well, and never disputed it or raised this as an issue with the Landlord.

In my view, had the Tenant believed that he did not have a separate parking agreement for this upgraded parking spot, and that this upgraded parking is actually included in the rent, it is not logical why the Tenant continued to pay these extra amounts since 2011, nor raise this as a matter of concern with the Landlord. I find it reasonable to conclude that this inaction would be more indicative that the Tenant was cognizant that he was paying separately for upgraded parking, and that this was not part of his rent. Moreover, a party is required to mitigate their loss as soon as they are aware of it. Given that the Tenant elected not to do anything about this since 2011, I find that this also leads to a reasonable conclusion that he was aware that he engaged into a separate parking agreement for this underground parking spot.

Furthermore, the Notice of Rent Increase forms indicate that parking has not been calculated as part of the rent increase, and that parking is a completely separate charge. Given that the burden is on the Tenant to prove his claims, I do not find that he has directed me to any documentary evidence that supports his position that parking for this upgraded spot was ever included in the rent. In addition, all of the evidence points to a separate parking agreement for this upgraded spot, for which the Tenant agreed that he entered into.

Based on a review of the totality of the evidence before me, I am not satisfied, on a balance of probabilities, that parking for this upgraded spot was ever included as part of the rent. Rather, I find it more likely than not that the cost for the underground parking was established as a separate parking agreement outside of what was included in the

rent originally. As I am satisfied that this parking arrangement was a completely separate agreement from the tenancy agreement, I dismiss the Tenant's claim on this issue in its entirety.

As the Tenant was not successful in his claims, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Tenant's claim pertaining to the parking fee is dismissed in its entirety.

The other claims on this Application that were severed are dismissed with 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: May 17, 2023

Residential Tenancy Branch