



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OLC, MNDCT, OT, FFT
OPR, MNRL-S, FFL

Introduction

Under section 58 of the *Residential Tenancy Act* (the “Act”), this hearing dealt with the tenant’s March 13, 2023, application to the Residential Tenancy Branch for:

- (i) an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) under section 46(4)(b) of the *Residential Tenancy Act* (the “Act”);
- (ii) an order for the landlord to comply with the Act under section 62 of the Act;
- (iii) a monetary order for compensation under section 67 of the Act;
- (iv) other issue not listed by Residential Tenancy Branch: an order to reduce the monthly parking fee and for the parking agreement to be in writing; and
- (v) authorization to recover the cost of the filing fee under section 72 of the Act.

The landlord applied on March 21, 2023 for:

- (i) an order of possession on the Notice under section 55(2)(b) of the Act;
- (ii) a monetary order for unpaid rent under section 67 of the Act; and
- (iii) authorization to recover the cost of the filing fee under section 72 of the Act.

The tenant attended the hearing. No one dialled in on behalf of the landlord during the hearing, which lasted from 11 A.M. to 11:28 A.M. The tenant testified under oath that the tenant served a Notice of Dispute Resolution Proceeding on the landlord by registered mail and submitted mail tracking information. It is my finding that the landlord was served with the required notice in compliance with the Act.

Preliminary Issue – Landlord application dismissed

As the onus is on the landlord to prove the validity of the Notice and the landlord has not attended the hearing to substantiate the Notice, I am cancelling the Notice. Based on this, the landlord's application is dismissed without leave to reapply. The tenant's application for an order cancelling the Notice is granted.

Issues

1. Is the tenant entitled to a monetary order for compensation?
2. Is the tenant entitled to an order to reduce the monthly parking fee and for the parking agreement to be in writing?
3. Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began February 1, 2019. Rent is \$1,840.00 due on the first day of the month. The landlord currently retains a \$850.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The tenant affirmed that:

- the tenant rents two parking spots from the landlord.
- the tenant was previously paying the landlord \$15.00 a month for a parking spot for a total of \$30.00.
- In March 2023, the landlord increased the price to \$40.00 a month per parking spot for a total of \$80.00. The tenant paid this increased price for March 2023.
- parking is not included in the tenancy agreement.
- there is no written agreement for the parking spots.

Analysis

Under section 7(1)(g) of the Residential Tenancy Regulations, a landlord may charge non-refundable fees for facilities requested by the tenant if those facilities are not required to be provided under the tenancy agreement. As the tenant's evidence is that parking is not included in the tenancy agreement, the parking fees charged by the landlord are non-refundable. Therefore, the tenant is not entitled to a monetary order for compensation for overpayment of the parking fee.

As parking is not included in the tenancy agreement, any increase in parking fees will also not be subject to the rent increase provisions under the Act. Therefore, the tenant's application for an order to reduce the monthly parking fee is dismissed without leave to reapply. In addition, the Director of the Residential Tenancy Branch does not have the authority to order the landlord to provide a parking agreement in writing to the tenant. Therefore, the tenant's application for an order for the parking agreement to be in writing is dismissed without leave to reapply.

Since the tenant was successful in its application to cancel the Notice, the tenant's application to recover the cost of the filing fee under section 72 of the Act is granted. Pursuant to section 72 of the Act, the tenant is ordered to withhold \$100.00 in rent for recovery of the filing fee.

Conclusion

The tenant's application to cancel the Notice is granted and the tenancy shall continue until it is ended in accordance with the Act.

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 18, 2023

Residential Tenancy Branch