Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing convened as a result of six separate Tenant's Applications for Dispute Resolution, filed in May of 2023, in which the Tenants sought to dispute an increase in the amount charged for parking as well as recovery of the filing fee.

The hearing of the Tenants' Applications was scheduled for teleconference on August 29, 2023, November 9, 2023 and December 7, 2023. All named Tenants called into the original hearing. The Tenant, K.C. was represented by an advocate L.H. On the first hearing date L.H. was assisted by an advocate in training, J.J. The Landlord was represented by their Property Manager, M.R., who also attended all hearings.

During the August 29, 2023 hearing, the Tenants confirmed they were confident in the advocacy provided by L.H. such that I advised them they would not be required to attend the continuation of the hearings. At the November 9, 2023 hearing all named Tenants attended save and except for G.A. G.A. and D.G. also did not attend the December 7, 2023 hearings.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Tenants Applications concluded on December 7, 2023. This Decision was rendered on January 11, 2024. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30-day period.

Issues to be Decided

1. Should the Tenants be obligated to pay the requested increase in for monthly parking at the rental unit?

2. Should the Tenants be entitled to recover the filing fees paid for their Applications?

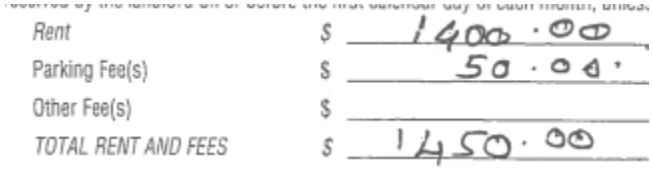
Background Evidence

M.R. testified on behalf of the Landlord. He confirmed he has been on the property management team since the October 2022 when the current owners purchased the property. As each of named Tenants in this Application were existing tenants at the time, he was not present when the relevant tenancy agreements were signed.

M.R. stated that the property has approximately 83 units in total and 60-65 parking stalls. Not all tenants have parking. However, every tenant in the building received a notice dated March 14, 2023 that their parking would increase to $150.00 except 6 tenants who had parking included in their rent and they did not get the increase.

In terms of how the Landlord arrived at the requested parking increase M.R. stated that the Landlord determined that the average parking in the area was from $150.00 to $225.00 for parking. M.R. then stated that the Landlord wants to make improvements to the parking area as well as the building itself and requires these funds to make these improvements.

M.R. confirmed that he has reviewed the tenancy agreements for all the Tenants in this application, and each of those Tenants have a clause in their tenancy agreement which separates rent from parking fees as follows (this is included for illustration purposes only and copied from one tenancy agreement as the rent for each Tenant named is different)



Rent	$	1400.00
Parking Fee(s)	$	50.00
Other Fee(s)	$	
TOTAL RENT AND FEES	$	1450.00

M.R. further confirmed that each of the named Tenants were obligated by their respective tenancy agreements to pay $50.00 or $75.00 per month for parking, however, all of their increases were to $150.00 per month. M.R. also confirmed that to his knowledge all the hearings relating to parking are joined with this hearing and that all of the Tenants have been paying the increased parking since June 1, 2023.

M.R. further confirmed that it is the Landlord's position that the parking portion is not rent, but a fee and therefore outside the rent restriction provisions of the *Act.*

M.R. argued that the parking fees, were separate and included in clause 7 as "rent and fees" for convenience only, and so that the tenants were not expected to write two separate cheques. M.R. also noted that in past years, tenants received a rent increase, the form showed what their old rent was, the increase, and the total amount, and there was a separate notation for what they paid for parking, such as "please add $50.00 or $75.00 for parking" and it was never included in the rent increase.

M.R. argued that parking was not an "essential service" rather, it is value added. He also noted that tenants had the option to get parking elsewhere and they can cancel at any time and can give one months notice to end their parking.

M.R. stated that the increase in parking fees was necessary to pay for line painting, lighting and EV charging for electrical upgrades and boxes which are going to be mandatory. He noted that there is uncertainty to recovering the costs and it is very expensive and time consuming to make these improvements. He also noted that a lot of rebates have disappeared and the if the Landlord does not attend to these upgrades and maintenance the parking areas will deteriorate.

In response to the Landlord's submissions, the Tenant, K.C., testified as follows. She confirmed that her tenancy began July 2021. She noted that parking was included from the beginning of her tenancy, and that it was part of the tenancy agreement despite the box not being checked. K.C. confirmed she paid for rent and parking with one cheque. She also confirmed that the new landlord took over in November 2022 and that the previous landlord did not increase parking.

The other Tenants named in the Applications confirmed that their tenancy agreements were the same as K.C.'s such that parking was included from the beginning of their tenancy, was paid with their rent, and that their parking had not increased during their tenancy.

In reply, the Landlord's agent confirmed that none of the other tenants had an increase in their parking until the new owners took over.

L.H. made submissions on behalf of the Tenant K.C. As noted, the remaining Tenants confirmed they agreed with the submissions of L.H. and did not provide any additional submissions. L.H. argued that as the current Landlord was not present when the tenancy agreements were entered into that they could not provide any evidence as to the parties' intention when entering into those agreements, such that the evidence of the Tenants should be preferred. In that case the Tenants agreed that parking was included in their tenancy agreements.

L.H. noted that while parking is on a separate line from rent, it is not a separate agreement, but rather a "service or facility" and is therefore included in the tenancy agreement and rent. L.H. further noted that before the new Landlord purchased the property, the parties were in agreement that parking was $25 or $50 per month and that in all cases the amount agreed upon was binding. He argued that the fact the previous landlord kept different tiers (amounts) for the parking shows that the previous landlord believed they were bound by the terms of the agreement as if they felt they could increase the parking when entering into new agreements with new tenants, they could have raised it for existing tenants then.

L.H. also argued that even if these parking fees were to be considered separate from the tenancy agreement, which he suggested would be absurd, that doesn't give the Landlord free reign to raise the amounts without restriction. He noted that there is a scheme under section 27 of the Act for landlords to withdraw non-essential services if they compensate the tenants the value of those services in an equal amount. He argued that if the landlords were allowed to freely increase the price of services by making the price so high that tenants could not afford it, this would allow landlords to essentially terminate the service without compensation.

L.H. also argued that the principle of contra preforentum should apply such that if there is any ambiguity in the tenancy agreements it should be interpreted in favour of the Tenants. He noted that as the Landlord drafted the tenancy agreements, if the Landlord wanted the agreement regarding parking to be entirely separate from the tenancy agreement, they had the option to do that.

M.R. made the following additional submissions on behalf of the Landlord. He noted that in all subsequent rent increases parking was noted as an *added fee* and was never touched or increased.

He further submitted that the standard form residential tenancy agreement provided by the Residential Tenancy Branch has changed frequently over the years such that initially parking was always included, and then landlords were permitted to allow a separate fee for parking, and now the most recent precedent for a tenancy agreement

does not allow a landlord to charge a separate fee and the parties have to enter into a separate parking agreement.

The Landlord also argued that parking was not essential as tenants can park elsewhere, on the street for free or in other parking lots. He also noted that the tenants could cancel their parking at any time.

Analysis

After consideration of the testimony and evidence of the parties and the submissions made, I find as follows.

The Act provides that a change to a tenancy agreement must be agreed to by the parties in writing. In this case the Landlord has unilaterally and substantially increased the cost of parking charged to these Tenants from $25.00 or $50.00 per month to $150.00 per month. While the Tenants have paid this increase since June of 2023, the Tenants do not agree to the increase and request reimbursement of the amounts paid. There is no separate parking agreement, nor is there any specified provisions in the respective tenancy agreements which permit the Landlord to increase the amount paid for parking for these Tenants.

The Act defines “services and facilities” to include parking spaces. The Act further defines “rent” to include money payable for services and facilities as set out in section 1 as follows:

> **"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]*;

Section 7(1)(g) of the Regulations provides that a landlord may charge a tenant a fee for services or facilities requested by the tenant, if those services or facilities are *not* required to be provided under the tenancy agreement. For clarity I reproduce section 7(1) as follows:

> **7** (1)A landlord may charge any of the following non-refundable fees:
> (a)direct cost of replacing keys or other access devices;

(b)direct cost of additional keys or other access devices requested by the tenant;
(c)a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
(d)subject to subsection (2), an administration fee of not more than $25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
(e)subject to subsection (2), a fee that does not exceed the greater of $15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
(f)a move-in or move-out fee charged by a strata corporation to the landlord;
(g)a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

I find that the inclusion of parking was a service or facility that was required to be provided under each of these tenancy agreements. In each case the tenancy agreement provided that these Tenants were to have parking from the date their tenancy began. This is not a case where the tenants moved into the property and then requested parking after the terms of their tenancy agreements were finalized. Rather, parking was included as a term of their tenancy from the start.

While their respective tenancy agreements set out the amount paid for parking in addition to the amount paid for rent, I do not agree that this sets out a separate agreement. I agree with the Tenants that had the Landlord wished to enter into a separate agreement for parking for these Tenants, they were at liberty to enter into such agreements at the time the Tenants moved in. In failing to do so, I find that the inclusion of parking to be an included service or facility for these Tenants and therefore part of their total rent payable.

The Landlord may charge a fee at an amount set by the landlord where the tenant requests service or facility and it was *not* required to be provided to the tenant under the tenancy agreement. The Landlord may enter into a separate tenancy agreement with future tenants for parking and may set the amount of monthly parking at a higher rate if they believe this to be an appropriate sum, but they cannot change the increased parking rate for these Tenants without the Tenants' consent.

I find that the requested increase in parking charges are limited to rent increases provided under Part 3 of the Act and Part 4 of the Regulations as I find the amount paid for parking to be included in their total rent payable.

As aptly noted by the Tenant, K.C.'s Advocate, L.H., a landlord may not restrict a service or facility without providing the tenant compensation pursuant to section 27. If a landlord had free reign to increase the cost of a service or facility the landlord could increase the cost to such an extent as to make it unaffordable to tenants and essentially terminate the service or facility without compensation and thereby avoid the Act.

As an illustration, access to laundry facilities are often included in a tenancy agreement even though tenants may have to pay an additional fee for the use of the onsite washer and dryers. This may be a service and facility which entices a tenant to move into a rental building as to carry their laundry offsite is cumbersome. If laundry facilities are included in the tenancy agreement and each load costs $5.00 when the tenancy begins, and the landlord then increases the cost to $50.00 per load, this may have the effect of essentially terminating the laundry facilities for most tenants who cannot afford this increase.

The same reasoning applies here. In this case, I find it likely these Tenants were attracted to their rental units and enticed to enter into these tenancy agreements because of the reasonable amount charged for parking. They have paid these reasonable amounts for the duration of their tenancies. The current $100.00 to $125.00 increase in parking has the effect of terminating these reasonable parking facilities for these Tenants without the required compensation. While they may be able to park for free on the street, it is also likely those spots are time limited such that the Tenants might be expected to move their vehicles frequently. Similarly, they may be able to find parking offsite, but presumably those stalls would not be as convenient and may cost substantially more than the amounts they agreed to pay when they first entered into their tenancy agreements.

The Landlord's representative argued that the Landlord requires additional funds to attend to much needed maintenance and upgrades. Should the Landlord incur the costs to improve the parking facilities, or the cost to provide charging stations for electrical vehicles for instance, the Landlord is at liberty to apply for an additional rent increase for capital expenditures under the Act.

Rent increases are governed by the Act and the Regulations and the Landlord may not increase rent except in accordance with this legislation. As such, I find the requested increase to $150.00 for parking for each of the Tenants named in this Application to be over the amounts legally permitted. As such, the Tenants are entitled to reimbursement of any amounts paid pursuant to this illegal rent increase. The Tenants may deduct any

amounts paid over and above that which is permitted pursuant to section 43(5) of the Act.

I confirm that my finding relates to these named Tenants only. I accept the Landlord's evidence that other tenants in the building do not have parking, some have parking included, and some have parking agreements which are separate from their tenancy agreements. I make no findings with respect to the tenants not named in the Applications before me.

Conclusion

The Tenants' request for an Orders with respect to the increased parking fees is granted.

Pursuant to section 62 of the Act I find that the total rent payable for each of the Tenants named in their respective Applications includes the amount paid for base rent and their parking as parking is an included service or facility pursuant to their tenancy agreements.

The Landlord may only raise their total rent in accordance with the Act and the Regulations. As the amount paid by the Tenants since June 2023 includes the increased parking charges, the Tenants are entitled to recover the overpayment by reducing their future rent payments pursuant to section 43(5).

As the Tenants have been successful in their Applications, they may also recover the $100.00 filing fee they each paid and may reduce their next months rent accordingly.

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: January 11, 2024

Residential Tenancy Branch