



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with two of the Tenants' Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order of \$225.00 for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act,
- an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act,
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act,
- to suspend or set conditions on the Landlord's right to enter the rental unit,
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Tenant VVU and Advocate RG attended the hearing for the Tenants.

Agents AJ and BS attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

As both parties confirmed service of the Proceeding Package and documentary evidence, I find both parties were served with the required materials in accordance with the Act.

Preliminary Matters

Both parties testified that they have resolved the following claims as per the Tenant's first application for dispute resolution:

- an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act,
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act.

The Tenant testified that they would like to withdraw their application for the above mentioned claims and, therefore, I dismiss without leave to reapply the Tenant's application for an order regarding their dispute of a rent increase and for the Landlord to comply with the Act.

The Tenant testified that they are still seeking an order requiring the Landlord to comply with the Act, as per their second application for dispute resolution. Further, the Tenant testified that this claim is related to their application to suspend or set conditions on the Landlord's right to enter the rental unit.

Issues to be Decided

Is the Tenant entitled to a monetary order for monetary loss or money owed?

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit, and an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

Is the Tenant entitled to their filing fee for both applications under the Act?

Background and Evidence

The parties agreed to the following details of the tenancy:

- This tenancy began on June 1, 2016,
- The monthly rent is \$1,214.15,
- The Tenant paid a security deposit of \$512.50, which the Landlord continues to hold in trust.

The Tenant is seeking a monetary order of \$225.00 for overpayment of parking in the amount of \$25.00 per month, from August 2022 to April 2023. Advocate RG for the Tenant stated that the parking fee is not part of the original signed Tenancy Agreement (TA). RG stated that from 2019 to April 2023 the Tenant paid \$25.00 per month for a single parking stall, as per a verbal agreement between the Tenant and the previous building manager.

RG testified that the Landlord gave the Tenant a backdated invoice in the amount of \$225.00 for parking fees, charging the Tenant an additional \$25.00 per month from August 2022 to April 2023. The RG stated that as of May 2023, the Landlord increased the parking fees to \$50.00 per vehicle and stall. The Tenant submitted the invoice as

part of their documentary evidence. The Tenant submitted their rent payments, showing parking and storage fees.

RG stated that the Tenant owns two motorcycles and parked them in a single parking stall and there should be no requirement to pay an additional amount. RG stated that the Tenant had disputed an illegal rent increase and the Landlord retaliated by increasing the parking fee. The Tenant stated that they bought a second motorcycle in fall 2021, and they parked both motorcycles in a single stall since that time.

Agent AJ for the Landlord testified that the parking fees are a facility or service that is not part of the TA, but fall under a separate agreement. AJ stated that the Tenant never informed them of their second motorcycle. AJ stated that the Landlord has a process for the assignment and tracking of vehicles and parking stalls. AJ stated that a fob device is provided for every vehicle, and only a single vehicle is allowed in each parking spot.

AJ stated that the Tenant paid \$25.00 as of 2019, for a single parking stall. AJ testified that the building manager learned of the second motorcycle in April 2023, contrary to the standard practice of a single vehicle per stall. The building manager contacted the Tenant who informed the building manager that they have had the second motorcycle since August 2022. AJ stated that the Tenant was charged \$25.00 per month, from August 2022 to April 2023.

AJ stated that in May 2023, the parking fees were increased to \$50.00 per stall for all residents of the building. AJ stated that letters were sent to all residents, specifically regarding new parking fees.

BS is the building manager for the Landlord. BS stated that they were not aware of the Tenant's second motorcycle until April 2023, at which time they issued a letter to the Tenant.

RG testified that the Tenant is seeking an order to suspend or set conditions on the Landlord's right to enter the rental unit, and for the Landlord to comply with the Act, regulation or tenancy agreement.

RG testified that in July 2023 the Landlord started monthly inspections of the rental unit when they had not conducted inspections for a seven year period prior to July 2023.

RG stated that the inspections were scheduled, with the following outcomes:

- July 20, 2023 – monthly inspection completed,
- November 10, 2023 – fire inspection completed,
- November 21, 2023 – monthly inspection completed,
- January 30, 2024 – the building manager did not attend for the inspection,
- February 6, 2024 – inspection completed.

RG stated that the Landlord has harassed and bothered the Tenant with the above noted entries. RG testified that during these inspections, the BS has impacted the quiet enjoyment and privacy of the Tenant. RG stated that BS walked throughout the rental unit, opened closet doors and took multiple photographs and videos of the Tenant's personal belongings.

RG testified that the Landlord did not provide 30 days in between inspections and that inspections were not completed for other residents in the building. RG stated that the Landlord is only targeting Tenants if they have lost arbitration cases against them. RG stated that the Landlord has no valid reasons for the inspections and are trying to check for illegal activities, as stated by BS.

AJ stated that the inspections were only conducted on a monthly basis and as part of their standard practice, and that the inspection of November 10, 2023 was a fire inspection. AJ stated that for all dates of inspection, the Landlord provided 24-hour notice to the Tenant. The Landlord submitted the 24-hour notifications as part of their documentary evidence. AJ stated that the inspections were conducted in under a two minute period.

AJ stated that the BS was cordial, respectful and professional during all inspections. AJ stated that BS follows the process of opening closets and taking photographs, and stops such actions if the tenants are not comfortable with that during the inspection.

AJ stated that the inspection of July 2023 and November 2023 was four months apart. AJ stated that BS could not attend on January 30, 2024, as they were dealing with a family emergency. AJ stated that given the inspection of February 6, 2024 was after the first hearing, they did not provide any evidence as per the direction of the Arbitrator.

AJ stated that inspections are conducted by BS and the maintenance manager of the building. AJ stated that 6 of the 18 units are inspected at this time, with the plan to inspect additional units as permitted according to staffing levels.

BS testified that when they conduct inspections of rental units, they walk in and take wide angle photographs of the main rooms. BS stated that they open closet doors and take photographs from afar, without touching any personal belongings. BS testified that the full inspection is completed within a two minute period.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Is the Tenant entitled to a monetary order for monetary loss or money owed?

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

I find the Tenant did not prove that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act, regulation or tenancy agreement.

Firstly, both parties agreed that the Tenant did not have any vehicle when the tenancy began in 2016. The Tenant got their first motorcycle in 2019, and they admitted that they paid a \$25.00 monthly parking fee based on a verbal agreement that was for parking of their motorcycle.

Secondly, the tenancy agreement has a line for a parking fee, which was left blank, however, it indicates the amount of the monthly rent. Based on the above, I find the rent does not include parking. Further, I find the Tenant's evidence of monthly rent payments only shows the amount paid, with reference to rent, and separate fees for parking and storage. I find the documentary evidence does not prove rent is part of the monthly rent and a term of the tenancy agreement.

In the matter before me, I find the Landlord has established their process for implementing and collecting parking fees that is independent of the monthly rent. I find the invoices submitted as part of the documentary evidence of both parties supports that the Landlord charged for the parking fee and not monthly rent.

Therefore, I find that parking is not included in the monthly rent or as a separate service or facility pursuant to the signed tenancy agreement. As such, I find the Tenant did not prove that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act, regulation or tenancy agreement. There was no breach of the Act to hold the Landlord responsible for the claimed loss related to the overpayment of parking fees.

For the above reasons, the Tenant's application for a Monetary Order of \$225.00 for compensation for money owed or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit, and an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

Section 70 of the Act states the director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 if satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29 the director, by order, may authorize the tenant to change the locks, keys or other means that allow access to the rental unit and prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

Section 62 of the act states that an arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

In this case, I decline to make an order to suspend or set conditions on the Landlord's right to enter the rental unit, and an order requiring the Landlord to comply with the Act for the following reasons:

Firstly, I am not satisfied that the Landlord is likely to enter the rental unit other than as authorized under section 29 of the Act. In fact, I find the Landlord's documentary evidence and the witness testimony of BS, proves the contrary, that the Landlord has complied with section 29 of the Act.

The Landlord provided proper 24-hour notification to enter the rental unit for the monthly inspections and this is supported by their documentary evidence. Further, although the Advocate for the Tenant stated that the inspections are unreasonable and for no valid reason, I find the Landlord is within their right as per section 29, which states a landlord may inspect a rental unit monthly.

The Tenant has concerns with monthly inspections impacting their quiet enjoyment and privacy. I find the inspections are conducted in accordance with the Act, and with a reasonable process and timing as submitted by the Landlord. This is supported by the documentary evidence of inspection transcripts. In addition, I accept the testimony of BS, that the inspections are completed within a two-minute period with minimal interruption. I find it is reasonable for the Landlord to inspect the rental unit, by walking throughout the rental unit and opening closets.

Despite the above, I find the Tenant's concern with respect to the violation of their privacy is a valid claim. BS stated that they open closet doors and take photographs from afar, without touching any of the personal belongings of the Tenant. I find the necessity for photographs of contents of the closets is not justified. BS stated that they do not take photographs of any closets or personal items if there is a concern by the Tenant.

With the above agreement in place, I expect the Landlord to comply with actions that adhere to reasonableness and are justified for monthly inspections.

Regarding the Tenant's claim that they are being targeted by the Landlord, I find no basis for this claim, as the Landlord has established that the building manager and maintenance manager are conducting inspections based on their duties and management processes. This is further supported by the witness testimony of BS.

Based on the above, I find the Tenant is not entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit, and an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act.

As noted above, I caution the Landlord to proceed with inspections and photographs that are necessary and justified as part of their monthly inspections.

Is the Tenant entitled to their filing fee for both applications under the Act?

As the Tenant was not successful in their applications, the Tenant's applications for authorization to recover the filing fee for both applications from the Landlord under section 72 of the Act are dismissed, without leave to reapply.

Conclusion

The Tenant's applications are dismissed in their entirety.

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: March 1, 2024

Residential Tenancy Branch