Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, PSF, RR, FF, O

Introduction

This hearing was originally scheduled for June 26, 2013 to hear the tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; authorization for a rent reduction; Orders for the landlord to comply with the Act, regulations or tenancy agreement; and Orders for the landlord to provide services or facilities. Both parties appeared or were represented at the originally scheduled hearing. The hearing was adjourned to permit the parties to serve each other and the Branch with evidence in support of their respective positions.

The hearing was reconvened on August 15, 2013 and both parties appeared or were represented. Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is it necessary to issue Orders to the landlord for compliance or to provide services or facilities?
2. Has the tenant established an entitlement to monetary compensation for damage or loss under the Act, regulations or tenancy agreement?
3. Has the tenant established entitlement for a rent reduction?

Background and Evidence

The tenancy has been in effect since February 1, 2004. The tenant raised two primary issues by way of this Application: 1) unlawful increases of parking fees; and 2) the removal of a washing machine and dryer. Below, I have summarized the parties' respective positions regarding these issues.

Parking

Clause 3 of the written tenancy agreement states the following:

3. RENT due and payable in advance by the first day of each month.

Basic Living Space	$ 685.00
Parking	15.00 (One tenant vehicle)
Other	_____.
TOTAL	$ 700.00

Several Notices of Rent Increase have been issued over the duration of this tenancy. On the Notices of Rent Increase the landlord based the rent increase and identified the "current rent" and the "new rent" on rent payable for the "basic living space" only. The Notices of Rent Increase were silent with respect to parking fees except the Notice issued in May 2011 which has a hand written notation that parking of $5.00 per month was payable in addition to the rent.

I was presented evidence that the landlord requested the tenant start paying $15.00 for parking starting December 1, 2007. The tenant objected and the landlord responded by indicating a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities would be issued if the parking was not paid staring December 1, 2007. I was also presented evidence that the landlord sought to increase the monthly parking charge from $15.00 to $25.00 per month starting May 1, 2008. However, the Notice of Rent Increase issued in May 2011 indicates parking was $5.00 per month in addition to "rent". I heard that at times the tenant's parking fees were reduced to nil or $5.00 per month to reflect services the tenant performed for the landlord. The evidence was rather unclear as to what amount the tenant actually paid for parking and for which months; however, both parties were of the position the tenant likely paid the increased parking fees as required by the landlord.

It was undisputed that the landlord notified the tenant in May 2013 that the landlord was increasing the monthly charge for his assigned parking space to $35.00 per month starting June 1, 2013 and that this increased amount would be taken by way of a pre-authorized debit. The tenant did not agree with having to pay such an amount and gave up the assigned parking space. The tenant is currently parking on the street.

The tenant seeks to have a parking space provided to him for the monthly fee of either: nil or $5.00 as previously agreed upon and as evidenced by the Notices of Rent

Increase. Alternatively, the tenant is agreeable to paying $15.00 for parking as provided in the tenancy agreement.

The landlord was of the position that the agreement to provide parking and its related charge is a separate contract and is distinct from rent for the basic living space so parking fees are not subject to rent increase limitations imposed by the Act. The landlord confirmed that there is no other written contract that provides for a parking agreement and that clause 3 of the tenancy agreement is the only part of the tenancy agreement that addresses parking. Nevertheless, the landlord was of the position the landlord is at liberty to change the monthly parking charges to an amount determined appropriate by the landlord. The landlord also submitted that another tenant also pays $35.00 for monthly parking so the charge requested of the tenant is not unreasonable.

Laundry machines

The tenant submitted that when his tenancy started there were three washing machines and two dryers in the common laundry room. When the current owner took over the building one washing machine was taken away, leaving two sets of laundry machines for tenants to use. In April 2013 one pair of machines was removed, leaving the tenants only one washing machine and one dryer. The landlord subsequently issued a Notice of Rent Increase to increase the tenant's rent by $36.00. The tenant is of the position that serves and facilities have been restricted and the tenant seeks a rent reduction of $36.00 per month so that rent essentially remains at its current level.

By having only one set of laundry machines the tenant submitted that he is unable to do his laundry at the building since he is very busy working three jobs and does not have time to wait through multiple loads using one set of laundry machines. Whereas, when there were two sets of machines, two loads could be done at the same time. As a result, the tenant has been taking his laundry to a Laundromat near his workplace. The tenant submitted a receipt showing that doing his laundry at the Laundromat cost him $9.50 on one occasion. The tenant submitted that he does laundry once per week. Taking into his account his time and costs to use a Laundromat, the tenant requested compensation of $200.00 in addition to the rent reduction requested for future months.

The tenant acknowledged the landlord provided a system whereby tenants may select blocks of time on a board but the tenant was of the position the system is not effective as the most desirable times are often already blocked by other tenants.

The landlord's agent was unaware that there were ever three washing machines in the common laundry room. A letter was provided from the owner who stated there were

two washing machines when he took over the building in April 2007. The landlord's agent also submitted that there are only two washing machine hook-ups in the laundry room.

The landlord submitted that the two sets of laundry machines were formerly used by 34 rental units including 16 one-bedroom units and 18 two-bedroom units. The landlord has since installed ensuite laundry machines in the two-bedroom units, leaving only 16 smaller units to use the machines in the common laundry room.

The landlord submitted a document from a company that supplies laundry machines to apartment buildings. The document indicates that one set of laundry machines typically serves 14 – 18 one-bedroom units. A letter from the owner indicates that, based upon money collected from the coin operated machines, only 3.22 loads of laundry are done daily.

The landlord submitted that the tenant's busy schedule and choice to use a Laundromat convenient to his workplace is not the landlord's responsibility. Furthermore, the tenant's unit number has not been seen on the board used to block laundry times. The landlord provided a photograph of the board depicting multiple times available for the laundry machines.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

Parking

The Act provides that terms of a tenancy agreement cannot be changed without the consent of both parties. The tenancy agreement indicates that the parties agreed that parking for one tenant vehicle would be provided to the tenant for $15.00 per month. There is no other written contract or term in the tenancy agreement that indicates the parties agreed that the landlord may increase the parking fee.

The Act defines "services and facilities" to include parking spaces. At issue is whether the landlord may increase the amount charged for parking and if so, the manner in which this may be accomplished. The difficulty or complication regarding amounts that may be charged for parking (and other services and facilities) arises because the Act defines "rent" to include money payable for services and facilities and whereas the Act and the Regulations also provide that a "fee" may be charged for a service or facility.

“Rent” is subject to rent increase limitations in Part 3 of the Act and fees are not subject to Part 3 of the Act.

Section 1 of the Act defines “rent” 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]*;

[my emphasis added]

Section 97(2)(k) of the Act provides that regulations may be created to deal with fees a landlord may charge a tenant. Section 7 of the Residential Tenancy Regulations provides for non-refundable fees a landlord may charge a tenant.

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.

[my emphasis added]

Considering section 7 as it is written, and noting that there is no limitation imposed upon the landlord for the amount of the fee, I conclude that the landlord may charge a fee at an amount set by the landlord where the tenant requests the service or facility and it was not required to be provided to the tenant under the tenancy agreement. Thus, I must consider whether the parking space is a service or facility required to be provided to the tenant under the tenancy agreement.

In the case before me, I find that parking space is required to be provided to the tenant under the tenancy agreement. I make this determination considering:

- the tenancy agreement clearly indicates parking for one tenant vehicle in clause 3 of tenancy agreement;
- there is no other separate parking agreement or another term in the tenancy agreement that addresses parking;
- the tenant had been provided a parking space since the tenancy commenced; and,
- there is no indication the tenant ever had to request a parking space after the tenancy formed.

Since parking space was agreed to be provided and when provided when the tenancy agreement was entered into I find the charge related to this service or facility meets the definition of “rent” under section 1 of the Act and is not a “fee”. Accordingly, I find the parking charge in this case is limited to rent increases provided under Part 3 of the Act.

Upon review of the Notices of Rent Increase that are based upon the “basic living space” rent only and the tenancy agreement clearly shows that a parking charge was in addition to the “basic living space”, I find the tenant is required to pay a parking charge in addition to the rent indicated on the Notice of Rent Increase. I find the amount payable by the tenant is $15.00 per month as this is the amount clearly agreed upon by both parties in entering the tenancy.

Given the above, I make the following orders that:

1. The landlord provide the tenant with a parking space for one vehicle without delay.
2. The tenant shall pay $15.00 per month for the parking space in addition to the amount indicated on his most recent Notice of Rent Increase.
3. The next Notice of Rent Increase may reflect the current rent for “basic living space” and parking of $15.00 in calculating the rent increase and new rent.
4. The requirement to provide the tenant with a parking space may not be removed unless the tenancy agreement is amended by mutual agreement, in writing.
5. Any amount the tenant paid for parking in excess of $15.00 per month may be recovered by the tenant.

Laundry machines

The Act provides that a service or facility may not be restricted or terminated without: 1) written notice to the tenant and 2) giving the tenant a rent reduction that reflects the loss of value of the tenancy due to the termination or restriction of the service of facility.

I find, based on the balance of probabilities, that there were two functional laundry machines when the current owner acquired the property, and not three as submitted by the tenant. Therefore, I find that there was two sets of laundry machines prior to April 2013 and since April 2013 there has been one set of laundry machines in the common laundry room.

The parties were in dispute as to whether the service of facility (laundry machines) has been restricted. Below, I further consider their respective positions.

I accept that the tenant would benefit from doing two loads of laundry at one time if both sets of machines are available when the tenant wishes to use them and that this is not possible now that there is only one set of machines available for his use. However, when I consider the occupants of 18 two-bedroom units also had use of the two sets of laundry machines I find I am not persuaded that the tenant would have the benefit of two available sets of machines at the times he so desired as the tenant testified that the existing machines are usually booked when he wants to do laundry.

The landlord demonstrated that there are many available times to do laundry, as evidence by the board showing blocked and available spaces, and the owner's submission based upon revenue collected from the machines.

I find it likely that the tenant likes the convenience of the Laundromat given its location near his workplace and considering the tenant is usually busy working. Furthermore, the tenant has to pay for use of the laundry machines at the residential property as well, bringing the true additional cost of going to the Laundromat down. Therefore, I am not convinced the tenant has resorted to using the Laundromat due to the landlord's removal of one set of laundry machines as opposed to the tenant's personal choice to use a more convenient location.

When I consider two-bedroom units are likely to be occupied by more occupants than one bedroom units I find it unlikely there has been a restriction of use. To illustrate: the two sets of machines were formerly used by 16 one-bedroom units and 18 two-bedroom. Assuming one occupant per bedroom that equates to 50 occupants for two

sets of machines (or 25 occupants for each set of machines). Currently there are approximately 16 occupants using one set of machines. Thus, I find there to be potential for more availability for the laundry machines than before.

For the above reasons, I deny the tenant's request for a rent reduction or monetary compensation.

Filing fee

Given the tenant's partial success in this Application I award the tenant one-half of the filing fee. In satisfaction of this award the tenant may deduct $25.00 from a subsequent month's rent payment.

Conclusion

I have issued orders with this decision with respect to parking space and parking charges.

The tenant's requests for a rent reduction and monetary compensation in relation to the laundry machines have been denied.

The tenant may deduct $25.00 from a subsequent month's rent payment to recover one-half of the filing fee.

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: September 13, 2013

Residential Tenancy Branch