



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devonshire Properties Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") to dispute an additional rent increase and for recovery of the filing fee.

The parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Does this dispute fall under the jurisdiction of the *Residential Tenancy Act* so that I have authority to make a Decision?
2. If so, is the tenant entitled to prevent the landlord from increasing the monthly parking fee and to recover the filing fee?

Background and Evidence

The tenant submitted that this tenancy began in 2008 and the landlord submitted that the tenancy began on June 1, 2007, for an original fixed term of 1 year. Current monthly rent is \$1189.

Neither party submitted a copy of the tenancy agreement, but the landlord indicated that the tenancy began with another landlord and that the current landlord became the new owners in December 2009.

The rental unit is one of a multi unit apartment building.

This dispute involves an increase in the monthly parking fee.

Tenant's oral and written submissions-

The tenant submitted that on February 22, 2014, the tenant was notified of a rent increase. The tenant supplied the notifying letter, but not the actual rent increase form, which apparently was attached. I note that the notifying letter informed the tenant that the rent increase dealt with the rent for the rental unit, but that other charges such as parking and pool membership were still applicable at the rate paid in the past.

On March 27, 2014, the tenant received a notice of an increase in parking rates, effective May 1, 2014. The tenant supplied this notice.

The tenant contended that the landlord's increase in the monthly parking fee was a deceptive attempt to circumvent the allowable monthly rent increase permitted by the Act and that the rent increase for the parking was substantially more than the 2.2% allowed under the Act.

As part of his argument, the tenant submitted that as all tenants have paid the monthly rent, parking and gym fees in one cheque, these separate charges should now form part of the rental agreement. The tenant questioned the timing of the notice of the increase in parking, which followed the notice of the rent increase for the rental unit.

Landlord's oral and written submissions-

The landlord submitted that at the beginning of the tenancy, the tenant signed a separate parking agreement, with the original landlord, and was a separate agreement from the lease. The landlord supplied a copy of the document, entitled "Parking Agreement", showing that the tenant signed the agreement on either October 12, 2008, or December 10, 2008.

The landlord submitted that the parking agreement shows that the landlord reserved the right to change the agreed upon rate with a written notice in advance of a month.

The landlord pointed out that the increase in the monthly parking went into effect on May 1, 2014, and that the increase in monthly rent went into effect June 1, 2014, which would allow the tenant enough time to provide his notice to vacate should he choose to leave.

Analysis

Under the section 1 of the Act, rent is defined as money or value agreed upon by the landlord and tenant in return for the right to possess the rental unit, use of the common areas, and for services and facilities.

In this case, as I was not provided a copy of the tenancy agreement by the applicant, I find that the monthly rent was for the right to possess the rental unit and for use of the common areas, only, especially in light of the fact there was no dispute that parking did not form a part of the original tenancy agreement. Therefore the monthly rent did not include parking as a service or facility.

As such, I find that the parking fee paid by the tenant was not part of the monthly rent, was controlled by a separate agreement, and is therefore not subject to the requirements of section 43 of the Act, which deal with notices to increase the rent.

I therefore decline to find jurisdiction to resolve this dispute as I do not find the issue falls under the Act.

Conclusion

I do not find the *Residential Tenancy Act* applies to this dispute and I have declined jurisdiction.

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: June 23, 2014

Residential Tenancy Branch

