Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, PSF, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant and her agent (the tenant) attended the hearing via conference call and provided testimony. The landlord's agent (the landlord) attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence in person to the landlord. Both parties also confirmed the landlord served the tenant with their submitted documentary evidence by posting it to the rental unit door. Neither party raised any service issues. On this basis, I find that both parties have been sufficiently served and are deemed served as per section 90 of the Act.

Preliminary Issue(s)

At the outset, the tenant's application was clarified. The tenant and her agent clarified that there were two requests. The tenant seeks an order to dispute the landlord's removal of part of her parking. A stall currently used for her trailer. The tenant also seeks an order to have the landlord re-instate general visitor parking for all tenants. The tenant seeks a finding that the parking stall is a material term of the tenancy and is essential to use of the rental unit as part of the living accommodation. The tenant

argues that the landlord must comply with Residential Tenancy Branch Policy Guideline #22, Termination or Restriction of a Service or Facility. The landlord's agent indicated her understanding of the issues and was prepared to proceed.

Issue(s) to be Decided

Is the tenant entitled to an order for the landlord to comply and/or to provide services or facilities agreed upon?
Is the tenant entitled to an order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed this tenancy began on April 1, 2002 on a month-to-month basis as per a signed tenancy agreement dated March 8, 2002.

The tenant seeks an order to cancel the landlord's notice (30 day notice) dated July 18, 2019 in which the landlord advised the tenant to vacate the parking stall occupied by the tenant's utility trailer. The tenant argues that this is a material term of her tenancy and is essential to use of the rental unit as living accommodations.

The landlord disputes this claim stating that this parking stall is not paid for by the tenant, nor is it a material term of the tenancy. The landlord stated that the tenant has a parking spot assigned as part of her tenancy in stall #8. Both parties also confirmed that the tenant rents an additional parking stall #7 for a second vehicle. The landlord argues that the tenant's trailer occupies a stall normally designated for motorcycles and is not entitled to this parking spot. The landlord stated that the trailer has occupied this space as a courtesy on the part of the landlord and that the tenant has no right to this stall as part of the tenancy agreement.

The tenant also seeks an order to have the landlord reinstate visitor parking for all tenants. The tenant argues that visitor parking was changed in 2015 and that this was part of the tenancy agreement in which the landlord would provide visitor parking. The tenant referred to section 34 of the original signed tenancy agreement which states in part,

> **The Tenant will have the privilege of parking one automobile(s)/light truck(s) in a location designated by the Landlord (and will pay to the Landlord in advance each month on the date of his rental payment is due the sum of $0 for the parking privilege).** The Landlord will not be responsible for providing guest parking. **If parking is available (whether or not there is a charge), parking areas are to be occupied only by operative, licensed vehicles, driven by Tenants and/or Occupants, holding a valid BC Drivers License, with a valid Pacifica Housing Parking Pass.** Passes will only be issued where proof of valid Insurance, and Drivers License have been supplied to the Landlord, and/or Agent. Guests will only use designated visitor parking areas. Full-sized trucks, recreation vehicles, commercial vehicles, boats or trailers will not be parkin on the Property without the prior WRITTEN CONSENT of the Landlord. Any vehicle leaking oil, or other fluids must be removed from the Property. The Landlord will have the right to tow away (at the owner's expense) vehicles improperly parked or vehicles which contravene this section.

The tenant argues that all conditions of this portion of the parking policy have always been met by the tenant. The tenant also argues that the landlord has failed to meet local government requirements in providing visitor parking. When asked the tenant was unable to provide the section of the local bylaws, a copy of the bylaw or any complaints filed with the local government and any responses. The tenant also refers to page 10 of her documentary evidence submission a typed document dated February 28, 2002 re: Parking Policy. It refers in part to the tenant in unit 3 re: Notification of a Designated Parking Spot. "All units are assigned a designated parking spot whether the tenant has a vehicle or not. Please read the attached (see reverse) parking rules carefully to avoid misunderstandings. It also states, "Your parking spot is: 8 and Motorcycle spot for Trailer. Effective 01-Jan-02"

The landlord disputes this argument of the tenant and stated that there is currently 5 visitor parking spots on a first come, first serve basis. The landlord stated that each tenant in the rental property is provided with one parking spot and can apply for an additional parking spot at an additional cost. The landlord also argues that the document referred to as "Parking Policy" dated February 28, 2002 is not part of the signed tenancy agreement and that the landlord has no record of ever issuing such a document to the tenant. I note that a review of the document and the accompanying evidence show that it appears to be an excerpt in part from the "Parking Policy".

Analysis

Residential Tenancy Branch Policy Guideline #22, Termination or Restriction of a Service or Facility states in part,

This Policy Guideline deals with termination or restriction of a service or facility that is provided by the landlord under a tenancy agreement.

A. LEGISLATIVE FRAMEWORK

In a tenancy agreement, a landlord may provide or agree to provide services or facilities in addition to the premises which are rented. For example, an intercom entry system or shared laundry facilities may be provided as part of the tenancy agreement. A definition of services and facilities is included in Section 1 of the Residential Tenancy Act (RTA) and the Manufactured Home Park Tenancy Act (MHPTA).

Under section 27 of the RTA and section 21 of the MHPTA a landlord must not terminate or restrict a service or facility if:

• the service or facility is essential to the tenant's use of the rental unit as living accommodation, or;

• providing the service or facility is a material term of the tenancy agreement.

A landlord may restrict or terminate a service or facility other than one referred to above, if the landlord:

• gives the tenant 30 days written notice in the approved form, and

• reduces the rent to compensate the tenant for loss of the service or facility.

B. ESSENTIAL OR PROVIDED AS A MATERIAL TERM

An "essential" service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation or use of the manufactured home site as a site for a manufactured home, the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

***A material term** is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Even if a service or facility is not essential to the tenant's use of the rental unit as living accommodation, provision of that service or facility may be a material term of the tenancy agreement. When considering if a term is a material term and goes to the root of the agreement, an arbitrator will consider the facts and circumstances surrounding the creation of the tenancy agreement. It is entirely possible that the same term may be material in one agreement and not material in another.*

In determining whether a service or facility is essential, or whether provision of that service or facility is a material term of a tenancy agreement, an arbitrator will also consider whether the tenant can obtain a reasonable substitute for that service or facility. For example, if the landlord has been providing basic cablevision as part of a tenancy agreement, it may not be considered essential, and the landlord may not have breached a material term of the agreement, if the tenant can obtain a comparable service.

C. RENT REDUCTION
Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.
If the tenancy agreement doesn't state who is responsible for any added service or facility, not provided by the tenant, after the commencement of the tenancy, and there is a cost involved in obtaining the service or facility, the landlord is responsible for the cost, unless the landlord has obtained the written agreement of the tenant to be responsible for the cost.
Where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award a reduction in rent.
Where there is a termination or restriction of a service or facility due to the negligence of the landlord, and the tenant suffers damage or loss as a result of the negligence, an arbitrator may also find that the tenant is eligible for compensation for the damage or loss.
• See also Policy Guideline 16: Compensation for Damage or Loss

D. BURDEN OF PROOF
Where the tenant claims that the landlord has restricted or terminated a service or facility without reducing the rent by an appropriate amount, the burden of proof is on the tenant.
There are six issues which must be addressed by the landlord and tenant.
• whether it is a service or facility as set out in Section 1 of the Legislation;
• whether the service or facility has been terminated or restricted;
• whether the provision of the service or facility is a material term of the tenancy agreement;
• whether the service or facility is essential to the use of the rental unit as living accommodation or the use of the manufactured home site as a site for a manufactured home;
• whether the landlord gave notice in the approved form; and
• whether the rent reduction reflects the reduction in the value of the tenancy.

In this case, I find on the tenant's first request to cancel the "30 day notice" dated July 18, 2019, for the tenant to vacate the parking stall occupied by the tenant's trailer is dismissed. The tenant's argument is that her parking stall for "8 and Motorcycle spot for Trailer" provides for a parking stall for a vehicle in stall #8 and an additional stall for the trailer. A review of the signed tenancy agreement states in part,

> **The Tenant will have the privilege of parking one automobile(s)/light truck(s) in a location designated by the Landlord** (and will pay to the Landlord in advance each month on the date of his rental payment is due the sum of $0 for the parking privilege). **The Landlord will not be responsible for providing guest parking.** If parking is available (whether or not there is a charge), parking areas are to be occupied only by operative, licensed vehicles, driven by Tenants and/or Occupants, holding a valid BC Drivers License, with a valid Pacifica Housing Parking Pass. Passes will only be issued where proof of valid Insurance, and Drivers License have been supplied to the Landlord, and/or Agent. Guests will only use designated visitor parking areas. Full-sized trucks, recreation vehicles, commercial vehicles, boats or trailers will not be parkin on the Property

> without the prior WRITTEN CONSENT of the Landlord. Any vehicle leaking oil, or other fluids must be removed from the Property. The Landlord will have the right to tow away (at the owner's expense) vehicles improperly parked or vehicles which contravene this section.

It is clear that each unit has a designated parking stall. In this case, the tenant's unit #3 has a parking stall #8. Both parties confirmed this in their evidence. The tenant has claimed that the parking agreement also provides for a parking stall for her trailer as claimed for "1 motorcycle spot for trailer". In reviewing the signed tenancy agreement as noted above the "Parking Policy" it does not provide for any additional parking stalls except for references to visitor parking and a second vehicle in sections 2 and 3 of the "Parking Policy". I interpret this to mean that each tenant is entitled to 1 parking stall. As noted, additional parking may be had at an additional fee as in this case. The tenant rents an additional parking stall for a second vehicle. The landlord has argued that the tenant does not pay for this stall in which the trailer sits. The tenant has made reference to a letter dated February 28, 20021, "Notification of a Designated Parking Spot" arguing that this letter by the landlord designates "Your parking spot is: 8 and Motorcycle spot for Trailer, effective 01-Jan-02." The landlord has argued that there is no such record of this letter being issued to the tenant and that it cannot be accurate. I also note that there is no designation of a stall for this trailer. As such, I find that the tenant was allowed "informally" to park her trailer in these stalls as opposed to being assigned a specific parking stall for the trailer. I also note that the tenant has failed to provide sufficient evidence that the parking stall for her trailer is a material term of the tenancy and that it is crucial to her rental unit. On this basis, I find that the tenant's application to cancel the "30 day Notice" to be unsuccessful.

On the second request by the tenant to have the landlord re-instate the visitor parking as she has argued that this is a term of the tenancy agreement. I find based upon the evidence submitted that the tenant has failed to establish this claim. The tenant's request is dismissed. As noted above in section 34 of the tenancy agreement,

> **The Landlord will not be responsible for providing guest parking.** If parking is available (whether or not there is a charge), parking areas are to be occupied only by operative, licensed vehicles, driven by Tenants and/or Occupants, holding a valid BC Drivers License, with a valid Pacifica Housing Parking Pass.

It is clear that the landlord as stated in the tenancy agreement that they will not be responsible in providing guest parking (visitor parking). I note the next words, "**If parking is available**" then the conditions of parking set by the landlord are to be met.

In this case, the tenant has provided undisputed evidence that she has repeated met those conditions. The landlord has provided undisputed testimony that there is some visitor parking. Both parties agreed that the landlord has limited the number of parking stalls for this purpose. As such, I find on this basis that the tenant's request to re-state visitor parking is dismissed.

Conclusion

The tenant's application for dispute is dismissed without leave to reapply.

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: October 31, 2019

Residential Tenancy Branch