



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRSTSERVICE RESIDENTIAL BC
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

This hearing dealt with the tenants' application, filed on June 17, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62.

The landlord's agent and the two tenants, tenant EJ ("tenant") and "tenant CT," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 10 minutes from 11:00 a.m. to 11:10 a.m.

All hearing participants confirmed their names and spelling. The landlord's agent and the tenant both provided their email addresses for me to send this decision to both parties after the hearing.

The landlord's agent stated that she is the director of the landlord company ("landlord") named in this application. She said that the landlord is an agent for the owner. She claimed that she had permission to represent the landlord and owner at this hearing. She provided the rental unit address.

The tenant identified herself as the primary speaker for the tenants at this hearing and tenant CT agreed to same.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing.

The landlord's agent confirmed receipt of the tenants' application for dispute resolution hearing package. The tenant confirmed receipt of the landlord's evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenants' application and both tenants were duly served with the landlord's evidence.

Issue to be Decided

Does the RTB have jurisdiction, pursuant to the *Act*, to decide this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the jurisdiction claim and my findings are set out below.

The tenant confirmed that the tenants applied for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement. The tenants did not identify which sections of the *Act* were relevant to their application. The tenant claimed that parking should be included as part of the tenants' monthly rent and the landlord should not be entitled to remove any of the tenants' parking stalls.

The tenant agreed that the tenants were cautioned by the RTB, by way of repeated phone calls, at the time they filed this application and thereafter in June and July 2022, that the RTB may not have jurisdiction to decide the tenants' application, since parking was not included in their written tenancy agreement but was a separate parking agreement. I raised the issue of jurisdiction at the outset of this hearing and asked both parties to provide submissions regarding same.

Both parties agreed to the following facts during this hearing. Both parties' written tenancy agreement does not include parking as part of monthly rent. Both parties signed separate parking agreements for the tenants to rent parking spaces for separate monthly costs from the landlord.

Analysis

The following sections of the Act state, in part (my emphasis added):

Definitions

1 In this Act:

"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...

"service or facility" includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:

...(d) **parking spaces and related facilities;**

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and **services and facilities**, and includes a licence to occupy a rental unit;

Enforcing rights and obligations of landlords and tenants

6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes]...

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(a) the standard terms;...

(f) the agreed terms in respect of the following:

(vi) which services and facilities are included in the rent;

Both parties agreed that parking is not included in the monthly rent for this rental unit and tenancy, as per the parties' written tenancy agreement. Both parties agreed that parking is dealt with in a separate parking agreement with separate costs. Sections 1, 6, and 13 of the *Act*, as noted above, require the landlord to include parking as a service or facility as part of rent in the tenancy agreement.

Accordingly, I find that the RTB does not have jurisdiction to decide the tenants' application, since parking is not included as a service or facility in the monthly rent or the parties' written tenancy agreement. Therefore, I cannot issue an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement.

I informed both parties of my decision verbally during this hearing. I notified them that nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

Conclusion

I decline to exercise jurisdiction over the tenants' application.

I make no determination on the merits of the tenants' application.

Nothing in my decision prevents either party from advancing their claims before a Court of competent 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: November 04, 2022

Residential Tenancy Branch