Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding SEVILLE MANAGEMENT & LEASING LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI-ARI-C, PSF, OLC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order to dispute a rental increase, pursuant to section 43;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, under section 62; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The tenants were represented by agent SH (the tenant) and the landlord was represented by agents NC (the landlord) and MB. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding an order to dispute a rental increase and order to require the landlord to provide services or facilities are not sufficiently related to any of the tenants' other claims to warrant that they be heard together.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for an order to dispute a rental increase and for an order to require the landlord to provide services or facilities. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except the claims for an order to dispute a rental increase and order to require the landlord to provide services or facilities.

Issues to be Decided

Are the tenants entitled to:

1. an order to dispute a rental increase?
2. an order for the landlord to provide services and facilities?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed the ongoing tenancy started in July 2000. Monthly rent is $1,133.65, due on the first day of the month. The landlord collected and currently holds in trust a security deposit of $330.00. The tenancy agreement was submitted into evidence. It indicates:

> 3. Parking: see rent below.
> […]

> 5.RENT. The tenant shall pay the rent to the landlord in advance on or before the first day of each month.
> Basic Living Space: $ 660.00
> Parking: $ [empty]
> TOTAL: $ 660.00

The landlord submitted an estoppel certificate signed by the tenants in December 2006:

> I. The tenancy is current and the Tenant has not served notice to the Registered Owners.
> 2. All rent and other amounts payable under the tenancy, up to the date of this certificate, have been fully paid. The monthly rent payable for the month of December, 2006 is $750.00. The Tenant has resided at the Premises since 08/01/00 and the effective date of the last rental increase was 07/01/06. There is no prepaid rent.
> 3. In accordance with the tenancy agreement, the Tenant has paid a security deposit, to the Landlord, in the amount of $330.00

The tenants are seeking an order to not pay a rent increase in the amount of $60.00 per month and for an order for the landlord to continue to offer parking in the rental building.

The tenant affirmed the tenancy agreement implicitly includes parking in the rental amount, the tenant has been parking her vehicle in the rental building since the beginning of the tenancy and never paid an extra fee for parking. The landlord was always aware the tenant parked in the rental building.

On October 05, 2022 the landlord sent a letter to the tenants requiring the payment of a parking fee in the monthly amount of $60.00: “Effective September 01, 2022 parking is $60/month. […] As of October 5, 2022, you have an outstanding balance of $120.00 (2 months), please remit immediately to avoid towing.”

On October 07, 2022 the landlord sent a letter to the tenants:

> Notice to all tenants:
> RE: PARKING – Final Warning
> Any vehicles without a parking agreement will be towed away on owner’s expense as of October 15, 2022. Thank you for your cooperation.

The landlord emailed the tenant on October 12, 2022:

> Please be noted, this is not a disability issue, this is not a rent increase issue but a financial issue.
> You had free parking for 22 years, now the landlord's property taxes, utilities, municipality requirements, and cost have increased greatly.
> Thank you for understanding.

The tenant stated the landlord started charging a parking fee for new tenants in 2012.

The landlord testified she did not charge for parking prior to October 2022 because the costs were low. The landlord said the property taxes, insurance and maintenance costs increased and the rental unit's market rent is $2,000.00.

The landlord affirmed the tenancy agreement and estoppel certificate do not include parking, as they do not state that parking is included. The landlord stated that most tenants signed a tenancy agreement that excludes parking and that the parking charge is not a rent increase.

The landlord testified that drivers could park for free on the streets and now drivers have to pay to park on the streets.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Rent Increase

Sections 41, 42 and 43 of the Act state:

> 41 **A landlord must not increase rent except in accordance with this Part.**
> 42
> **(1)A landlord must not impose a rent increase for at least 12 months after whichever of the following applies**:
> (a)if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
> (b)if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
> **(2)A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.**

> **(3)A notice of a rent increase must be in the approved form.**
> (4)If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.
> 43
> **(1)A landlord may impose a rent increase only up to the amount**
> **(a)calculated in accordance with the regulations,**
> **(b)ordered by the director on an application under subsection (3), or**
> **(c)agreed to by the tenant in writing**.
> (2)A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.
>
> (emphasis added)

The landlord is subject to section 43(1) of the Act.

In accordance with Regulation 22, the maximum allowable rent increase was (https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases):

- 2% for 2023
- 1.5% for 2022

In Rhebergen v. Creston Veterinary Clinic Ltd., 2014 BCCA 97 (Rhebergen v. Creston), the British Columbia Court of Appeal dealt with ambiguity in contracts:

> [54] Generally a court must endeavour to resolve ambiguity in order to determine the mutual intention of the parties to a contract by interpreting the wording of any given clause in the context of the whole of the agreement as well as the factual matrix that gave rise to the agreement and against which it is intended to operate: Jacobsen v. Bergman, 2002 BCCA 102, paras. 3-6.

In Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257 (Berry v. BC), the British Columbia Supreme Court affirmed that ambiguity should be resolved in favour of the tenants:

> I start from the accepted rules of statutory interpretation. I conclude that the Act is a statute which seeks to confer a benefit or protection upon tenants. Were it not for the Act, tenants would have only the benefit of notice of termination provided by the common law. In other words, while the Act seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in

> that benefited group: See (Canada Attorney General) v. Abrahams, 1983 CanLII 17 (SCC), [1983] 1 S.C.R. 2: Henricks v. Hebert, [1998] B.C.J. No. 2745 (QL)(SC) at para. 55:
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> > I think it is accepted that one of the overriding purposes of prescribing statutory terms of tenancy, over and above specifically empowering residential tenants against the perceived superior strength of landlords, was to introduce order and consistency to an area where agreements were often vague, uncertain or non-existent on important matters, and remedies were relatively difficult to obtain.

The estoppel certificate does not have provisions about parking. The landlord admits that she is charging the tenants a parking fee because the rental costs increased, as stated in the October 12, 2022 email.

Based on the tenancy agreement, and considering Rhebergen v. Creston and Berry v. BC, I find that parking is included in the monthly rent, as the tenancy agreement does not stipulate an extra fee for parking. Furthermore, the landlord is aware the tenants always parked in the rental building since the beginning of the tenancy in 2000 and did not charge a parking fee until October 2022.

Paying for parking on the street is not analogous to paying for parking in a rental building, as relations between particulars cannot be compared to relations between the government and citizens.

Considering the above, I find that monthly rent in the amount of $1,133.65 includes parking. The landlord cannot charge an extra fee for parking.

Provide Services and Facilities

Section 27 of the Act addresses the landlord's ability to terminate or restrict services of facilities:

> (1)A landlord must not terminate or restrict a service or facility if
> (a)the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
> (b)providing the service or facility is a material term of the tenancy agreement.
> (2)A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
> (a)gives 30 days' written notice, in the approved form, of the termination or restriction, and
> (b)reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Residential Tenancy Branch Policy Guideline 01 states:

> 1. A landlord must continue to provide a service or facility that is essential to the tenant's use of the rental unit as living accommodation.
> 2. If the tenant can purchase a reasonable substitute for the service or facility, a landlord may terminate or restrict a service or facility by giving 30 days' written notice, in the approved form, of the termination or restriction. The landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

As the tenants admit that they have been able to park their vehicle in the rental building, I find an order for the landlord to provide access to parking is not necessary.

If the landlord serves a notice to terminate or restrict the tenants' access to parking (namely, form RTB 24), the tenants may submit a new application for an order for the landlord to provide services or facilities.

I dismiss the tenants' claim for an order for the landlord to provide services or facilities.

Filing fee

As the tenants are successful with their application, pursuant to section 72 of the Act, I authorize them to recover the $100.00 filing fee. I order that this amount may be deducted from a future rent payment.

Conclusion

Monthly rent in the amount of $1,133.65 includes parking. The landlord cannot charge an extra fee for parking.

Pursuant to section 72(2)(a), the tenants are authorized to deduct $100.00 from the next rent payment to recover their 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: February 27, 2023

Residential Tenancy Branch