



Civil Resolution Tribunal

Date Issued: October 3, 2018

File: SC-2017-003551

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mackay v. FirstService Residential BC Ltd. doing business as FirstService Residential et al*, 2018 BCCRT 584

B E T W E E N :

Angus Mackay

APPLICANT

A N D :

FirstService Residential BC Ltd. doing business as FirstService Residential and 1395 West 14th Avenue Holdings Ltd.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about the rental price for a garage/storage locker (garage). The applicant, Angus Mackay, is a tenant in the building that houses the garage, and says he had a verbal contract with his previous landlord, BL, to rent the garage for \$20 per month. The applicant paid that rate for 8 years, from 2007 until the building was sold in 2015. The applicant says that the new landlord has broken that contract, as he raised the garages' rents to \$250 per month, since September 1, 2015. The applicant wants the respondents to honour the \$20 per month verbal contract and he wants 21 months of \$230 "overpayment" refunded, which totals \$4,830.
2. The respondent, 1395 West 14th Avenue Holdings Ltd., (1395 Holdings) became the building's new owner in 2015. The respondent, FirstService Residential BC Ltd. doing business as FirstService Residential (FirstService), has been the building's property manager since January 2018. The respondents say that the applicant was given notice of a change to the monthly fee for the garage. The respondents say the applicant agreed to this change by paying the new rate. The respondents deny any overpayment. The respondents claim \$3,550 for "administration fees".
3. The applicant is self-represented. FirstService and 1395 Holdings are represented by Claire Skolos, an employee of FirstService.

JURISDICTION AND PROCEDURE

4. These are the tribunal's formal written reasons. The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I find I am able to fairly resolve this dispute based on the documentary evidence and written submissions before me. An oral hearing is not necessary.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
8. The applicant had first raised his concerns about the \$250 garage rental rate increase to the Residential Tenancy Branch (RTB), which concluded in an October 8, 2015 decision that it did not have jurisdiction under the *Residential Tenancy Act* (RTA) over the separately rented garage. It is therefore undisputed that the RTB does not have exclusive jurisdiction over this dispute and that the tribunal can resolve it.

ISSUE

9. The issues in this dispute are a) whether the applicant is entitled to rent at \$20 per month for his garage, b) to what extent, if any, the applicant is entitled to a \$4,830 refund for alleged overpayments for the garage, and c) to what extent, if any, are the respondents entitled to reimbursement of \$3,550 in administration fees.

EVIDENCE AND ANALYSIS

10. I have only commented on the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.

11. It is undisputed that when the applicant first rented his apartment, a garage was not available and he was waitlisted. Thus, the garage was not included in his original tenancy agreement. It is also undisputed the applicant paid \$20 per month for the garage #7 from 2007 through August 2015, which he paid together with his rent. However, it is undisputed that this was based on a verbal contract with the building's prior owner.
12. The \$20 parking rate was later referenced in some of the applicant's revised tenancy agreements that addressed rental increases for the residential unit, but not in all cases. In any event, it is undisputed that the applicant's rent for his residential unit did not include the garage, and that the garage rental was always a separate fee of \$20, until 2015.
13. It is undisputed that when 1395 Holdings bought the building, it raised the garage rent to \$250 per month. The RTB's decision essentially rested on the fact that the garage was not included within the total monthly rent for the applicant's residential unit. Rather, from the outset the garage was rented separately, for \$20 per month. The garage rent was never part of the notice of rent increases for the residential rental unit. The RTA does not impose a limitation on what a landlord may charge for parking or for a separate storage unit. In all of these circumstances, I find this tribunal proceeding is properly before me for a decision.
14. The applicant says FirstService refused to negotiate a fair price. The applicant said he paid the \$250 while trying to negotiate a fair price, to avoid his motorcycle and possessions being left out on the street. He says he always intended to recoup the alleged overpayment after negotiating a fair price.
15. The applicant does not allege that the prior building owner agreed to maintain the \$20 rate indefinitely. The fact that the rate continued for 8 years is not determinative. The respondent says all agreements for garage space state that the landlord can change the rental rate with one calendar month notice. The respondents met this obligation. The fact that other tenants may have negotiated a different rate is not relevant, because those tenants each had their own contract

with the landlord. As noted above, the RTA does not govern the separate rental of a garage, and therefore the RTA's provisions about rental increases do not apply.

16. The respondents gave the applicant fair notice of the rate increase to \$250. I accept that that was a significant increase from \$20. However, the respondents have no contractual obligation to continue to rent the garage to the applicant for \$20 or for any particular rate. The applicant appears to submit that because the verbal contract was silent about rate changes, the respondents do not have the discretion to set a new rate. I disagree. Again, while the RTA governs the rate of rental increases for residential units, as noted above, it does not govern the separate rental of a garage or storage locker.
17. In any case, a rate increase after 8 years is reasonable. The applicant says \$250 does not reflect a market rate because the other tenants pay \$40 per month for storage. The respondents say that while 2 other tenants have received lower rates, for the most part other tenants pay \$250, which it says is the market rate based on advertisements it provided in evidence for local garages. In any event, other applicants' rates are not relevant to the applicant's contract with the respondents. If the applicant does not want to pay \$250 per month for the garage, his option is not to do so and terminate the garage rental, and, if necessary, find another garage to rent.
18. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful I find he is not entitled to reimbursement of \$125 in tribunal fees.
19. I turn then to the respondents' claim for \$3,550 in dispute-related expenses, which they describe as 'administration fees'. FirstService submits that under its management agreement with 1395 Holdings, it is entitled to charge for litigation support. That may be true, but that is an issue between the respondents. The tribunal's rules make it clear that legal expenses will only be awarded in extraordinary cases, and it is up to the tribunal member's discretion. I do not see that this case is extraordinary, as it is a relatively straightforward contractual issue. I find the respondents are not entitled to the \$3,550 claimed against the applicant.

ORDERS

20. I find the applicant's claims, and therefore his dispute, must be dismissed.
21. I dismiss the respondents' claim for \$3,550 in dispute-related expenses.

Shelley Lopez, Vice Chair