



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF

Introduction

This hearing was convened on an application by the tenant seeking an Order under section 62(3) of the *Act* to require the landlord to restore the reserved parking she has had for the past twelve years.

Issue(s) to be Decided

Is the reserved parking a material term of the rental agreement? Does the tenant have a grandfathered right to the reserved parking?

Background and Evidence

This tenancy began on October 1, 1996. Rent is \$320 per month plus \$25 cable and the landlord holds a security deposit of \$100. The present landlord, a non-profit society, took over management of the building from another such society on October 1, 2011.

During the hearing, the tenant gave evidence that the former landlord had established a practice of allocating 12 of the 14 parking spots available by the 72 unit rental building by seniority. By that criterion she had been assigned a reserved parking stall in 2000 which she has occupied since.

By prior general notice and a letter to the applicant tenant dated July 31, 2012, the landlord advised the tenant that reserved parking was to be discontinued as of October 1, 2012 and parking to be allocated on a "first-come-first-parked" basis.

The letter advised that the practice was intended to align the rental building parking with that of the landlord's other six properties and to better fit the landlord's changing demographic as persons with disabilities had been added to the previous mandate of serving independent seniors.

The letter stated that the twelve available parking stalls served 23 cars registered at the time, a number that the landlord stated had grown to 30 in the interim. During the hearing, the landlord repeated the principle of fairness, as all tenants paid the same rent.

The landlord gave evidence that tenants can get a "residence" parking pass for on-street parking in front of the building and further open parking is available on the street behind the building.

The landlord noted that there is no reference to parking in the rental agreement and the previous operators did not pass on any written confirmation of the reserved parking.

The tenant stated that the practice had come about by oral agreement and she submitted letters from the former managers and administrator of the residence who verified it. The tenant also submitted a petition in which the signatories attest that when their tenancies began, they were advised of the option of being placed on a waiting list for the limited parking stalls.

The tenant cited personal safety as part of her reason for wanting to retain the reserved parking. The landlord said the distances to street parking were short and would have little effect a tenant's exposure to harm.

Analysis

Section 27 of the *Act* addresses the termination or restriction of services for facilities as follows:

- 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.

As there is no written reference to parking in the written rental agreement, I find that the parking stall is not a material term of the rental agreement, and as free on-street parking is readily available, among other reasons, I find that it is not essential to the tenant's use of the rental unit.

Therefore, I find that the landlord may terminate the reserved parking with 30 days' written notice. However, as tenants with the reserved parking pay the same rent as tenants with no parking stalls, I find that a rent reduction is not in order.

In addition, I find that the absence of consideration adds weight to the landlord's position that there is no agreement that binds the landlord to provide the parking stall until the tenant no longer wants it. I find that the free reserved parking stall was a privilege that the landlord is at liberty to withdraw in order to achieve greater fairness and accommodate changing operational needs.

Conclusion

I find that removal of the parking privilege was within the landlord's right to manage the rental building and the application 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 09, 2012.

Residential Tenancy Branch