



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Middlegate Developments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, O, FF

Introduction

This was an application by two tenants LC and KPM for an Order that the landlord comply with the Act and the tenancy Agreement: to provide parking to the tenants at no extra charge than their monthly rent. The landlord's agents attended as did KPM on her own behalf and as agent for the tenant LC.

Issue(s) to be Decided

The issues to be decided are whether parking fees were included in the tenants' rent or the landlord can now request a separate agreement from the tenants to pay an additional amount.

Background and Evidence

The tenant KPM testified that her tenancy began on June 1, 2013. KPM dealt exclusively with the landlord's resident manager SP at the time. KPM testified that before or at the time of signing the tenancy agreement she asked SP that while she did not presently have a car, would parking be available without any extra charge? KPM testified that SP specifically advised her that parking could be available without any extra cost.

KPM testified that in December 2013 she was offered a car by her employer and at that time she asked SP to verify whether parking could be available to her at no extra charge. SP advised that she found KPM a parking spot and gave her the key as well as advising KPM of the location and confirmed that there would not be any extra

charge. KPM testified that at no time did SP request that she sign anything or make any payments. In fact KPM testified that she never had any discussions subsequent to that occasion with SP regarding parking fees or documentation or parking at all.

KPM testified that the new manager TV began her employment with the landlord in March 2014 and supplied an information request form to each tenant at the end of March 2014. That form requested details; including the vehicle description and parking stall location of each tenant.

KPM testified that the first time she had learned anything about parking fees was when she received a letter near the end of July 2014 from the landlord advising that due to an oversight by a previous manager she was not a registered as having a parking stall and therefore must register and pay a parking fee of \$ 45.00 per month. The landlord stated that it was relying upon a clause in the tenancy agreement. That clause states:

Parking must be arranged separately with the Company

KPM testified that eventually TM contacted her in August of 2014 and requested that she return the parking key after the landlord sent another letter warning KPM that her car would be towed.

KPM testified for LC that her tenancy began on January 18, 2014 and that she owned a motor vehicle at that time. KPM testified that SP assured LC at the time of entering into the tenancy agreement that parking was to be included in the rent and that she was assigned a stall number and given a parking key. KPM testified that there was never any follow up made by SP regarding fees or documentation with LC. The first LC heard about the landlord's request for money was when she too received the July 2014 letter.

KPM submitted that neither she nor LC should have to pay for parking now when an agreement was already in place that it was to be included in the rent.

SP testified that she was resident manager for the landlord from November 2012 until February 28, 2014. She was present at the signing of the tenancy agreements with both tenants. SP testified that parking was not discussed with KPM at the start of her tenancy agreement as she did not have a vehicle. SP testified that around December 2013 KPM obtained a vehicle and asked for a parking spot. SP testified that she informed KPM that she could park for free then as KPM was going away on vacation for a few weeks but after that it would be available for \$ 45.00 per month.

SP testified that she permitted LC to have a parking stall upon moving in for one month to help her out with moving. SP testified that she also discussed that parking after the month would be available at \$ 45.00 per month. SP testified that generally a key and a registration document agreeing to a set fee of \$ 45.00 are required for parking to be perfected. SP could not remember specifically when she advised the tenants of this requirement but was adamant that she generally advises all tenants of this requirement.

SP testified that she never varied from this procedure. SP testified that she had a conversation with both tenants that they must pay for parking or return their keys. She recalled that KPM advised that she was not sure what she would do. If she decided not to park she would return the key later. SP could not recall when she had any of these conversations. SP testified that neither tenant returned their keys.

TV testified that she began employment with the landlord on March 1, 2014 and around June 2014 began filling out information cards for each tenant. It was at that time that she discovered that about eight tenants were not paying for parking. TV spoke to those tenants and advised they were obliged to pay for parking pursuant to their tenancy agreement. TV admitted it was management that told her of this requirement. TV recalls telephoning the tenants and requesting they return their parking keys.

EG the office manager for the landlord testified that it was not fair because of an oversight of a previous manger that the tenants could park for free when their tenancy agreements were clear that parking was extra. EG testified that she first discovered that people were parking for free when she took a parking stall inventory and found a discrepancy in the revenues with the number of registered occupants.

Analysis

I find that the applicant KPM was a very credible witness. She gave her evidence with precision and great accuracy in a straight-forward manner. She recalled details and dates. Conversely I find that SP's evidence was vague as to her recollection of dates and conversations. Her testimony seemed to emphasise what she generally would do rather than what she actually did or said. Furthermore her recounting of the "temporary" assignment of parking spaces to the tenants conflicts with her stated policy which she claimed she never varied from. It also makes no logical sense that she would permit the tenants to park for free temporarily and not vigorously enforce the procedure thereafter. Interestingly the landlord's letter of July 25, 2014 states "*due to an oversight by a previous manager....you have a vehicle parked....*" I find that this admission of an oversight by the landlord coupled with SM's inability to recollect specific dates of conversations, illogical rationale for assigning the parking spaces, and failure to follow procedure all compel me to find that I must reject SP's evidence wherever there is any inconsistency with the evidence of the tenant KPM and her submissions on behalf of LC.

The tenancy agreement contained a term that "*Parking must be arranged separately with the Company.*" That clause is really a promise or requirement to enter into a separate contract or agreement for parking. I find that SP agreed that there would no extra charge for parking at the time of entering into the tenancy agreements with both KPM and LC or certainly at the time she provided them with access to parking in the building. Those agreements were confirmed providing parking stalls to the tenants without requiring any payment. SP was the resident manger of the landlord and

pursuant to section 1. of the Act was to be considered a shaving the same authority of the landlord.

1. "landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's **agent** or another person who, **on behalf of the landlord**,
- (i) permits occupation of the rental unit under a tenancy agreement, or
- (ii) **exercises powers and performs duties** under this Act, **the tenancy agreement** or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
- (i) is entitled to possession of the rental unit, and
- (ii) **exercises any of the rights of a landlord under a tenancy agreement** or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this; (my emphasis added)

I find that the tenants relied upon SP's representations and agreements that the rent was to include parking or that there would not be any extra charges for parking. Those representations and agreements were binding on the landlord. I find that the negotiations and representations were arrangements made on behalf of the landlord pursuant to I tenancy agreement which provided that *"parking must be arranged separately with the Company."*

I further find that the landlord now seeks to remedy what it characterizes as an oversight by compelling the tenants to pay for parking. Section 14 of the Act states as follows:

Changes to tenancy agreement

- 14** (1) A tenancy agreement may not be amended to change or remove a standard term.
- (2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.
- (3) The requirement for agreement under subsection (2) does not apply to any of the following:
- (a) a rent increase in accordance with Part 3 of this Act;
 - (b) a withdrawal of, or a restriction on, a service or facility in accordance with section 27 *[terminating or restricting services or facilities]*;
 - (c) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

I found that the landlord already has a separate oral agreements or terms which now are part of the tenancy agreements with the tenants that rent is to be included in the rent. I find that by the landlord now insisting that the tenants pay for parking is tantamount to changing a term of the tenancy agreement which would require the tenants' consent pursuant to section 14 (2). The tenants clearly do not consent and therefore the landlord must abide by that agreement that rent is to include parking or that no additional payment by the tenants KPM and LC for parking is required.

In the alternative I find that parking is a service which was included in this tenancy and the landlord cannot now require a payment for that service. That would be tantamount to withdrawing that service.

I find that the Tenants' Applications for Dispute Resolution have merit. The landlord is Ordered to comply with the Tenancy Agreement and Act by continuing to permit both the tenants KPM and LC to park in parking stalls at the residential tenancy property without any additional payments.

Conclusion

The landlord is Ordered to comply with the Tenancy Agreement and Act by continuing to permit both the tenants LC and KPM to park in parking stalls at the residential tenancy property without any additional payments. I have granted the tenants' Orders they requested. As compensation for the fees the tenants paid for filing this Application for Dispute Resolution, I hereby authorize both tenants LC and KPM to reduce their next monthly rent payments by \$50.00 each.

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 14, 2014

Residential Tenancy Branch

