



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF, O

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for the tenants to pay for a second parking stall and to recover their filing fee from the tenants with respect to this application. The tenants applied for;

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenants, tenant AI and tenant AA, withdrew their application for a monetary order for loss related to this tenancy as the landlord had already compensated them in the amount of \$137.98.

Service of Documents

The female tenant (“tenant AA”) testified that she sent the landlords a copy of the tenants’ dispute resolution hearing package by registered mail on December 16, 2014. The tenants provided the tracking number for this mailing. The landlords’ representative (“the landlord”) confirmed receipt of the package and Notice for Hearing. Based on all the evidence, and pursuant to section 89 and 90 of the *Act*, I find that the landlords were deemed served the tenants’ dispute resolution hearing package on December 21, 2014, 5 days after its registered mailing.

The landlord testified that she served her dispute resolution package to the tenant by registered mail on December 16, 2014. She provided a receipt and tracking number to verify this mailing. The tenant confirmed receipt of this package. Based on this evidence

and pursuant to section 89 and 90 of the *Act*, I find that the tenant was deemed served the landlord's dispute resolution package on December 21, 2014, 5 days after its registered mailing.

Issues to be Decided

Are the tenants responsible to pay for a second parking stall? Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement? Is either party entitled to recover the filing fee for this application?

Background and Evidence

This hearing relates to a dispute over payment for parking within a tenancy agreement. The landlords argue that, while the tenants currently occupy two parking stalls, they are only provided with one stall as a part of their tenancy agreement. The tenants testified that they have been provided with two parking stalls since the beginning of their tenancy in 2011 and have never paid fees with respect to a second stall. They argue that both stalls are included with the payment of their monthly rent.

The landlord provided documentary evidence as follows;

- a copy of the tenancy agreement between the landlord and the tenants;
- a copy of all rental increases related to that tenancy;
- correspondence, in letter and email form, between the landlord and tenants;
- a "case statement".

The documentary evidence for the landlords shows that this tenancy began on June 1, 2011 for a fixed term of one year. After that time and until the present date, the tenancy was regularly renewed. Under Section 6 of this residential tenancy agreement between the parties, labelled Rent and Fees, the rental amount is \$945.00. The next line in the rental agreement is labelled "Parking Fee(s)". Beside this label is a space for an amount. "[I]nc" is written in that space. There are no other fees itemized on the agreement and the "Total Rent and Fees" indicates \$945.00. At the end of the residential tenancy agreement, after all other provisions are listed, there is a space for writing additional information and it is labelled, "other". In that space, "no pets" is handwritten. There are no other notes in this space.

The tenant AA made submissions on behalf of both tenants. She stated that she believed, from the beginning of her tenancy, that she was given two parking stalls as part of her tenancy. She supported this with undisputed evidence that; she has more than one key for the underground parking; that she has a sticker for each vehicle and

parking stalls (2 different numbers on 2 different stickers); that she and her husband have been using the two parking spots since the beginning of their tenancy in 2011; that it was only in November 24, 2014 that she was advised she must pay for two spots, but given no reason for the change.

When the tenants received a letter from the landlords indicating the tenants would be required to pay a monthly fee for their second parking stall or surrender that stall, tenant AA testified that she attempted to contact the property manager for the residential premises but received no response. After some correspondence and after the tenants' vehicle was towed from their parking stall, the tenants filed for dispute resolution.

The reason provided by the landlords' representative for the change to the parking provisions for the tenants is that the previous allowance of two parking stalls was a mistake as was the issuance of stickers for both parking stalls. She indicated that, in her investigation of the parking at the residential premises, she discovered that an error had been made and that the tenants were receiving two parking stalls but *should* only receive one without payment for a second stall. The landlord's representative stated, "It was a mistake". She stated, with the documentary evidence as support, "everyone else in the building pays for their second parking stall".

It is worth noting that the landlords reimbursed the tenants for the costs relating to the towing of their vehicle.

Analysis

In some cases, issues related to parking raise a jurisdictional issue and are found to be outside of the purview of the Residential Tenancy Branch. In this particular case, parking is clearly referenced within the tenancy agreement. I find that in this case, this is a residential tenancy matter regarding a service or facility provided by a landlord as part of the tenancy agreement.

Section 27 of the *Act* provides that a landlord can terminate or restrict a service or facility that is not a material term of the residential tenancy agreement. If the landlord wishes to make such a change, the landlord must

- (a) give 30 days' written notice, in the approved form, of the termination or restriction, and
- (b) 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.

In this case, there is documentary evidence that the landlords provided a type of notice, in letter form, to the tenants with respect to the termination of their “free second parking stall”. However, the *Act* requires that the landlord provide this notice in a particular format. This notice has not been provided as of yet. Further, pursuant to section 27(b), of the *Act*, the landlords would be obliged to reduce the tenants’ rent in the amount of \$25.00 in this case, based on that reduction in value to the agreement as it has stood since 2011.

The landlords are not precluded from making a change to non-material services or facilities available to a tenant. However, the landlords must comply with the *Act* by; providing the appropriate notice to the tenant and making steps to compensate for any loss of use of service or facility. I find that the landlords have failed to comply with the *Act* and I grant the tenants’ application for an order that the landlords comply with the *Residential Tenancy Act*.

It is always worth noting a rule that the courts use in interpreting contracts and agreements. *Contra Proferentem*, in plain English means that if there is an ambiguous clause in a contract, it will be interpreted against the party responsible for drafting the clause. Mr. Justice Romilly of the BC Supreme Court referred to this rule or principle as follows;

.. This interpretation will therefore favour the party who did not draft the term presumably because that party is not responsible for the ambiguity therein and should not be made to suffer for it. This rule endeavours to encourage the drafter to be as clear as possible when crafting an agreement upon which the parties will rely. This rule also encourages a party drafting a contract to turn their mind to foreseeable contingencies as failure to do so will result in terms being construed against them.

In the case of this tenancy agreement, the landlords are considered to be the drafter of the agreement and, in testimony, the landlords’ representative testified that it was an oversight in first signing this tenancy agreement with ambiguity regarding how many parking stalls the tenants would receive at no cost. The actions of both parties over the past three years lend credence to the tenants’ claim that it was intended that they have two parking stalls within the cost of their tenancy. Furthermore, the fact that the tenants have two parking stickers provided by the landlord with two different stall numbers suggest an ongoing commitment to honour the tenancy agreement and the understanding of the tenants that they were provided with two parking stalls within their rent and rental agreement.

For the reasons outlined above, I find that the original Agreement and the original understanding of that Agreement, accepted in principle and acted upon by all parties for a period of over three years represents the suitable interpretation of this tenancy agreement. The tenants have two parking stalls as part of their tenancy agreement with no additional fee. I grant the tenants' application to have the landlords comply with the *Act*.

I dismiss the landlords' application to have the tenants pay for a parking stall in the manner suggested by the landlords.

The tenants withdrew their application to seek a monetary award with respect to towing fees. However, as the tenants were successful in the substance of this application, I find that the tenants are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I dismiss the landlords' application to have the tenants pay for their second parking stall.

The tenants withdrew their application to seek a monetary award.

I grant the tenants' application and I direct the landlords to comply with the *Act* by abiding by the residential tenancy agreement that indicates parking fees for two parking stalls are included in the tenant's rental amount.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$50.00 filing fee paid for this application. To implement this portion of this decision, I order the tenants to withhold \$50.00 from a future monthly rent payment to the landlords.

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: January 22, 2015

Residential Tenancy Branch

