



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 458480 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing was scheduled to deal with a tenant's application for orders for the landlord to comply with the Act, regulations, or tenancy agreement.

Both parties appeared or were represented at the hearing. The parties were affirmed and the parties were ordered to not make an unofficial audio recording of the proceeding. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The hearing was held over two dates and an Interim Decision was issued on December 2, 2021. The Interim Decision should be read in conjunction with this decision.

Issue(s) to be Decided

Have the tenants established that the landlord has violated the Act, regulations or tenancy agreement and orders for compliance are warranted?

Background and Evidence

The tenancy started on December 15, 2007 on a month to month basis. The monthly rent is currently \$1081.00 payable on the first day of every month. The residential property is described as being a 9-unit building. There are 10 covered parking spots and six uncovered parking spots on the residential property.

The tenants and the two former landlords executed a written tenancy agreement. The tenancy agreement indicates parking for one vehicle is included in rent. The current landlord purchased the property in July 2019.

The tenants use one of the covered parking spots for their vehicle; however, the parties are in dispute as to whether the tenants are entitled to a second parking spot in the uncovered area for their truck and camper or recreational vehicle ("RV").

Tenant's submissions

The tenants submitted that when their tenancy formed the former landlords reflected only one parking spot and no storage on the written tenancy agreement but orally agreed to give the tenants storage and a second parking spot to park an "RV". The reasoning provided to the tenants for not reflecting storage and the second parking spot on the tenancy agreement was to avoid GST. The tenants had a trailer at that time but it was too difficult to pull the trailer into the parking lot so they did not need the RV parking at that time. The former landlord assured the tenants that when they needed RV parking they would be provided an RV parking spot on the property.

The tenants sold the trailer shortly after the tenancy started and were without an RV until they purchased a truck and camper in 2011; however, the tenants took advantage of the storage facility on the property from the beginning of the tenancy.

The tenants testified that after they purchased the truck and camper they would park it in uncovered parking spot #12 between trips but they would store the truck and camper off-site during the off-season. When the tenants were not using the parking spot for their truck and camper the former landlord would allow other tenants to use that spot. Although others were permitted to use the parking spot by the former landlords, the tenants maintain that parking spot #12 was for their use exclusively.

In 2019, after the current landlord purchased the property, the tenants informed the current landlord they were entitled to storage space and the RV parking even though the written tenancy agreement did not reflect that. The current landlord was agreeable to permitting the tenants to use the storage space and the written tenancy agreement was amended to reflect that by way of the landlord's initials. However, the landlord did not amend the written tenancy agreement to reflect a second parking spot for RV parking but orally stated to the tenants that it would not be a problem.

After the current landlord purchased the property, the tenants had the truck and camper parked on the property for a brief period of time before taking it on a trip. In 2020 the tenants did not bring the truck and camper onto the property due to Covid-19. In 2021 the tenants brought the truck and camper onto the property and parked it in parking spot #12. The landlord offered uncovered parking spot #14 to them for RV parking but the

tenants were of the view it was not ideal as it would be more difficult to load and unload the camper in #14 so they remained in parking spot #12. The landlord then demanded they remove the truck and camper from the property, with 17 days notice, or it would be towed. The tenants removed the truck and camper from the property and proceeded to seek dispute resolution by way of this Application for Dispute Resolution.

The tenants are of the view that they are entitled to parking spot #12 to park their truck and camper based on what the former landlord orally promised them and their use of that spot for that purpose for several years. The tenants are also of the view that the truck and camper sufficiently fits in the parking stall and their RV does not impede the use of the other parking stalls nearby.

The tenants suggested that the landlord is motivated by charging parking for the uncovered parking spots and loss of street parking.

The tenants provided several photographs of their truck and camper parking on the property and letters exchanged between the tenants and the current landlord in 2021.

Landlord's position

The landlord is of the position the tenants are not entitled to a second parking spot according to the written tenancy agreement. Also, the landlord reached out to one of the former landlords (the other former landlord is deceased) to determine whether the former landlords orally gave the tenants permission to use a second parking spot for RV parking. The former landlord wrote a letter denying giving the tenants permission to park an RV beyond temporary use.

The landlord submits that he has never agreed to give the tenants long term, seasonal or full time use of parking stall #12 for their RV. When the current landlord acquired the property, the tenants did approach him about the storage and RV parking. The landlord was agreeable to permitting the tenants to use storage in the building but he was not agreeable to the RV parking which is why he amended the written tenancy agreement to reflect the inclusion of storage but not a second parking spot or RV parking.

When the landlord purchased the property in 2019 the tenants had the truck and camper on the property but it was parked on the property for only a short time as it was being prepared for a trip and the landlord did not take issue with it. The tenants did not bring the truck and camper on the property in 2020 and then in 2021 when the tenants indicated they would be bringing the truck and camper onto the property and that they

would be parking the truck and camper on the property permanently, the landlord told them not to. The tenants proceeded to bring it on the property anyways, without the landlord's consent. The landlord demanded the tenants remove the truck and camper from the property, in writing. The landlord also offered parking spot #14 to the tenants with a view to resolving their dispute; however, that is no longer an option as it would require removal of a tree and installation of a railing.

The landlord is agreeable to permitting the tenants to bring the truck and camper on the property for purposes of loading and unloading it when they go on trips or camping, for a day a time but not long term, seasonally or permanently.

The landlord is of the position that the size of the truck and camper impedes use of parking spots 13, 14 and 15 as it is difficult to navigate past the RV. In addition, the truck and camper fills up the entire stall so the other vehicles parked next to it are very cramped.

The landlord being motivated to restrict the tenant's use of parking spot #12 by parking revenue. The landlord acknowledged that he charges \$40.00 for one of the parking spots but pointed out that is a very small amount of revenue compared to the revenue generated by the property. Rather, the landlord submits that has an obligation to ensure its other tenants and guests can navigate the parking area with ordinary driving skills and the tenants are not entitled to something just because they say they are.

The landlord provided copy of the tenancy agreement, a letter written by one of the former landlords (the other former landlord is deceased), several photographs of the parking area, a diagram of the parking area, and letters exchanged between the parties in 2021.

Analysis

The tenants are of the position they are entitled to use parking spot #12 exclusively for parking their RV in addition to the covered parking spot they use for their vehicle. The landlord rejects the tenant's position they are entitled to park their RV in spot #12 or anywhere else on the property. Accordingly, the tenants are seeking that I order the landlord to provide them with RV parking in spot #12.

As the applicants, the tenants bear the burden of proof. The burden of proof is based on the balance of probabilities.

Based on everything before me, I provide the following findings and reasons.

Under section 13 of the Act, a landlord must prepare a written tenancy agreement and include certain information and terms in the tenancy agreement, including:

- (f) the agreed terms in respect of the following:
 - (vi) which services and facilities are included in the rent;

The definition of “services and facilities” under section 1 of the Act includes:

- (d) parking spaces and related facilities.

Based on the requirements of section 13 of the Act and the definition of services and facilities, the tenancy agreement must reflect the parking spaces and related facilities that are to be provided to the tenants as part of their rent payment. It is undisputed that the tenancy agreement executed by the tenants and the former landlords reflects parking for one vehicle. I find the tenancy agreement is clearly written and that term is enforceable. The current landlord has not restricted the tenant's use of the one covered parking spot they use to park their vehicle. As such, I find the landlord is compliant with the parking term, as it is written in the tenancy agreement.

The tenants argue that by way of the oral statements of the former landlord and their use of parking spot #12 for RV parking from 2011 onwards, the former landlord agreed to provide the tenants exclusive use of that parking spot for RV parking and the current landlord is obliged to continue to provide them with use of parking spot #12 for RV parking. However, I find the evidence before me is not sufficient or consistent with the tenant's position.

The letter from one of the former landlords that is still living states [with the tenant's names omitted by me for privacy purposes]:

I am writing to confirm the following.

1. _____ moved into Suite 203 on December 2007. They moved in with a rent of \$900. This included only one covered parking stall. No camper parking was included. There was no camper brought on to the property at this time.
2. At a later date a camper was brought on to the premises on a temporary basis. No long term parking permission was granted for this camper.
3. Over the years the _____ were asked repeatedly to remove the camper due to tenant complaints of the camper causing difficulty for them to park and turn around. They did not oblige.
4. The camper was stored away from the complex during the winter months.

Based on the former landlord's written statements, I find there is evidence that the tenants had used a parking spot for their RV on a temporary basis after their tenancy started. Long term, permanent or exclusive use of parking spot #12 is not indicated by the former landlord. Also, the tenant's own testimony was that they typically parked the RV on the property to prepare it for trips and unload it after trips before taking it to off-site storage in the off-season which, I find, is consistent with the statements of the former landlord that they used a parking spot for the RV on a temporary basis.

Also of consideration is that the tenants testified that when they were not parking their RV on the property, the former landlord would assign the parking spot to others and permit anybody to park in that spot which, if find, is inconsistent with the tenant's position that parking spot #12 was for their exclusive use.

The current landlord is agreeable to permitting the tenants to continue to bring the truck and camper on the property for very short periods of time to facilitate loading and unloading the unit for trips and I find the landlord's position is consistent with the use permitted by the former landlord. However, I find this permitted or tolerated activity does not establish the tenants are entitled to long-term, permanent or exclusive use of parking spot #12 or any other RV parking area in addition to the one covered parking spot they have for the vehicle. Therefore, I find, on a balance of probabilities, that the tenancy agreement, as it is written, accurately reflects what the former landlords agreed to provide to the tenants (permanent parking for one vehicle) and the current landlord is complying with the tenancy agreement.

Since the landlord is compliant with the tenancy agreement, I find it is unwarranted to issue an order for compliance to the landlord and I dismiss the tenant's application in its entirety.

Conclusion

The tenant's application is dismissed.

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: March 09, 2022

Residential Tenancy Branch