



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      AAT, PSF

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 30; and
- an order that the landlord provide services or facilities required by law pursuant to section 65.

The tenant attended the hearing. The landlord was represented at the hearing by its two agents ("**KB**" and "**AA**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### **Preliminary Issue – Name of Landlord**

At the outset of the hearing KB advised me that the tenant had incorrectly named the corporate landlord. She slightly misspelled the first word of the name, and incorrectly included the word "manager" as part of the name. The tenant agreed that these were errors. Accordingly, and with the consent of the parties, I order that the application be amended to correctly name the corporate landlord (full name on the cover of this decision).

### **Preliminary Issue – Service**

The tenant testified, and KB confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. In addition to this package, the tenant served several photographs on the landlord the day before the hearing via email. KB testified that the addresses she sent them were no longer current.

KB testified that he sent the landlord's evidence package to the tenant by registered mail on September 15, 2022. The tenant testified that she received the package on September 21, 2022.

The landlord's documents and the tenant's email were sent outside of the allowable time set out in the Rules. At the hearing, the parties agreed that, despite this, the landlord's documents should be admitted into evidence, and that the tenant's

photographs should be sent to the landlord's current email address and admitted into evidence.

Accordingly, I admit all of the documents submitted to the Residential Tenancy Branch (the "RTB") prior to the hearing into evidence.

### **Issues to be Decided**

Is the tenant entitled to:

- 1) an order to allow access to or from the rental unit or site for the tenant or the tenant's guests; and
- 2) an order that the landlord provide services or facilities required by law pursuant to section 65?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting February 20, 2012. Monthly rent is \$468. The tenant paid the landlord a security deposit of \$300, which the landlord continues to hold in trust for the tenant.

On April 28, 2020, the parties attended a RTB dispute resolution hearing (which I presided over, coincidentally), and reached the following settlement agreement:

Both parties agreed to the following final and binding settlement of all issues currently under dispute:

1. The tenants may keep a vehicle in the carport located outside the rental unit year-round, on the condition that the vehicle has annual storage liability insurance of at least \$200,000.
2. The tenants may park their second vehicle in visitor parking, if parking is available.
3. Neither party may discuss the details or particulars of this agreement with any other person, other than that party's lawyer, accountant, insurance agent or similar professional, or except as required by law.

(the "**Settlement Agreement**")

The tenant testified that the landlord has since instituted a new parking policy for the residential property which applies to all residents. The landlord submitted into evidence a copy of the policy which was circulated to the residents of the residential property. It states:

Due to excessive overnight parking in the visitor parking stalls the [landlord] will be implementing a parking permit system for overnight/long term parking in some visitor parking stalls within [the residential property].

There are a total of 24 visitor parking stalls - 12 stalls will remain as visitor parking with no overnight parking allowed, 12 stalls will be designated parking permit stalls that will allow overnight parking with a permit. 8 permit stalls will be for long term tenant parking and will be issued annually on a lottery basis, 4 permit stalls will be reserved for short term/one week overnight parking. Any vehicles parking in the visitor parking stalls overnight will be towed, at the owner's expense.

Permits will be hanger type to be hung on the vehicles rear view mirror. A deposit of \$25 will be required for each permit, the full amount will be refunded on the return of the permit.

Signage will be installed in the coming month and permits will be provided as of May 1st. If you have any questions or wish to register for one of the 8 parking permit stalls please contact the office at [landlord's email address and phone number].

(the "**Policy**")

At the hearing, KB stated that since the Policy was posted, the landlord had altered it slightly, having set aside 10 permit stalls for long-term parking and two permit stalls for short term/overnight visitor parking.

The tenant testified that since the Policy was implemented, she had been awarded one of the 10 permit stalls for long term parking. She stated that, as of the date of the hearing, the landlord was in compliance with the Settlement Agreement. However, she feared that the next time a lottery was held for the long-term parking, she might not obtain one of these stalls, and this would put the landlord in breach of the settlement agreement.

Additionally, the tenant argued that the Policy impinged on her rights to have guests and visitors to the rental unit. She argued that by limiting the amount of overnight parking for visitors and by eliminating overnight parking altogether on the residential property without a permit, less residents could have visitors, and that the likelihood of visitors driving under the influence (due to their inability to spend the night at the rental unit) increased.

The tenant testified that, as a direct result of the Policy, visitors have begun to park in front of rental units throughout the residential complex (where there are no parking spots).

The tenant argued that the reason the landlord implemented the Policy was to address issues they had with some occupants of the residential property having guests stay with them longer than two weeks, something prohibited by tenancy agreements. The tenant's tenancy agreement contains the following clause:

10. **Guests:** The tenant shall not permit any person other than an occupant listed at paragraph 7 without the consent of the lesser or agreed to in advance in writing by the lessor as a permitted occupant to reside or occupy the premises for a period in excess of 14 days whether or not consecutive in any 12 month period.

The tenant argued that if the landlord had issues with occupants allowing visitors to stay in their rental unit longer than two weeks, the landlord ought to enforce the Guests clause directly, rather than impose the Policy.

KB denied that this was the reason for implementing the Policy. Rather, he testified that, prior to the Policy being implemented, the landlord had issues with the people parking in non-designated areas and fire lanes. He stated that with the Policy's implementation, this has been reduced. KB also testified that the Policy ensures that daily visitor parking is available, whereas without the Policy, most available spots would be regularly occupied by longer term parking, leaving little room for daily visitors.

KB testified that there is a public parking lot a short distance from the residential property which permits overnight parking. The tenant did not disagree, rather stating that people do not like to walk that far when parking overnight.

## **Analysis**

### **1. Landlord's compliance with the Settlement Agreement**

On the tenant's own evidence, the landlord is currently in compliance with the Settlement Agreement. I cannot say what the outcome of next year's parking lottery will be, or even if the landlord will require the tenant to take part in that lottery (as opposed to granting her a parking spot pursuant to the Settlement Agreement).

As such, I find that this portion of the tenant's application is brought prematurely. No breach of the Settlement Agreement currently exists, and I cannot say if a breach of it in the future is likely to occur.

I dismissed this portion of the tenant's application with leave to reapply in the event the landlord refuses to allow her to park in the parking lot, as agreed to in the Settlement Agreement.

### **2. Does the Policy restrict visitor access to the rental unit?**

Section 30 of the Act states:

**Tenant's right of access protected**

- 30 (1)A landlord must not unreasonably restrict access to residential property by
- (a) the tenant of a rental unit that is part of the residential property, or
  - (b) a person permitted on the residential property by that tenant.

The tenant offered no evidence as to how the implementation of the Policy has actually restricted a guest of hers from accessing the residential property. Under the Policy, the tenant's guests may park in the parking lot on the residential property, so long as it is not overnight. If the tenant wishes her guests to stay overnight, the tenant may request a parking pass for her guest. There is no evidence before me that the landlord (reasonably or unreasonably) has denied such a request. If the tenant does not want to or forgets to make such a request, her guest can park in the parking lot near the residential property overnight.

I do not find that the Policy restricts access to the residential property, or if it does, that it does so unreasonably. Landlords are permitted to create rules regarding parking or the use of other common areas of a residential property in order to ensure the smooth operation of the residential property. I find that the Policy accomplishes this. It strikes a reasonable balance for the need for daily visitor spots to be available with the need for longer term overnight parking.

For these reasons, I dismiss this portion of the tenant's application, without leave to reapply.

**Conclusion**

I dismiss the tenant's application on the terms and for the reasons set out above.

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 18, 2022

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Residential Tenancy Branch