

DECISION

Introduction

This Decision should be read in conjunction with the Interim Decision dated October 5, 2023. This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing also dealt with the Tenants' Application for Dispute Resolution under the Act for:

- a Monetary Order for damage or compensation under section 67 of the Act
- an Order to provide services or facilities required by the tenancy agreement or law under section 62 of the Act
- an Order for the landlord to comply with the Act, regulation, and/or the tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord's Agent (the Agent) and the Tenants attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

Both parties agreed that they were served with the other's Proceeding Package and Evidence. As receipt was confirmed I find that both parties were sufficiently served for the purposes of this Act in accordance with section 71 of the Act.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for damage or compensation?

Is the Landlord entitled to recover the \$100.00 filing fee for this application from the Tenants?

Are the Tenants entitled to a Monetary Order for damage or compensation?

Are the Tenants entitled to an Order for the Landlord to provide services or facilities?

Are the Tenants entitled to an Order for the Landlord to comply with the Act, Tenancy Agreement or Regulation?

Are the Tenants entitled to recover the \$100.00 filing fee for this application from the Landlord?

Background and Evidence

I have reviewed all presented evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on August 15, 2021 with a monthly rent of \$1,425.00. Both parties agreed that rent is currently \$1,474.00 per month, due on the first day of each month. Both parties agreed that the Tenants paid the Landlord a security deposit in the amount of \$712.50.

It was undisputed by the parties that the Landlord's Building Manager was collecting parking fees from some tenants in the rental building and was keeping the money and not giving it to the Landlord.

The Agent testified that parking was not included in the Tenants' tenancy agreement and that since the Tenants have been parking in the parking lot of the rental building since the start of this tenancy until June of 2023, the Tenants owe parking fees for that period of time.

Tenant U.U. testified that he was unaware of the Building Manager's parking scam and did not make any payments to the Building Manager. Tenant U.U. testified that he is not responsible for past parking fees and that the Landlord should provide him with free parking going forward.

Tenant U.U. testified that when he first came to view the rental property in July of 2021 he informed the Building Manager that he needed parking and the Building Manager said ok. Tenant U.U. testified that the Building Manager told him that rent was \$1,425.00 per month and parking was an additional \$25.00 per month. Tenant U.U. testified that he verbally asked the Building Manager if he would accept rent of \$1,400.00 per month. Tenant U.U. testified that the Building Manager said no, but that he could include parking in the rent for no additional charge.

The tenancy agreement entered into evidence has a space for parking fees which was left blank. Tenant U.U. testified that he didn't review the tenancy agreement closely and relied on what the building manager told him regarding what was included in rent.

The Agent testified that the tenancy agreement clearly states under section 3 that no furnishings, equipment, facilities, services or utilities will be provided by the landlord and included in the rent EXCEPT those checked. The Agent testified that parking is not checked and is not included in rent.

Tenant U.U. testified that the Building Manager initially told him to park in visitor parking until he could provide him with a fob and parking spot. Tenant U.U. entered into evidence the following messages between himself and the Building Manager dated August 14, 2023:

- Tenant U.U.:
 - Hi [Building Manager] i could not find any street parking. I parked M\my car at loading parking.
- Building Manager:
 - Ok ill have to meet you tomorrow for the garage fob. What time are you available? We could meet sometime in the afternoon...
- Tenant U.U.:
 - Is it possible if you can provide me today with the fob and parking the evening. There is no street parking available 😞...
- Building Manager:
 - Oh shoot im not even in the area and wont' know when I'll be heading back. I also still need to figure out which spot is yours....

The Tenants entered into evidence messages between Tenant U.U. and the Building Manager as follows:

- August 15, 2021:
 - Tenant U.U.:
 - Hey [Building Manager] I hope you are good let me know when do you wanna come for the parking
- September 30, 2021:
 - Building Manager:
 - Morning Bud, can you park in 24 from now on. Thanks!

Tenant U.U. testified that after September 30, 2021 he parked in number 24 with no issues and no further discussions around parking until he received a text message from the Building Manager on March 31, 2023 which states:

He bro got some bad news. Owner is cracking down on parking now unfortunately. Its \$75/month. He needs to know who's parking in what spot and he'll know if there's someone parking and not paying.

So If your going to park downstairs you'll need to send in your parking fees to:

[Building Manager's work e-mail address] (Just put your unit number in the subject line.)

And if not, I'll need your parking fob. There's also other tenants looking for a spot. Let me know as soon as you can.

Tenant U.U. testified that he didn't know what the Building Manager was talking about because his parking was included in his rent. Tenant U.U. entered into evidence his message dated March 31, 2023 responding to the above:

Hey [building manager], I hope you are good and thanks for informing. I have not received any written notice. Why this sudden change? I am already paying \$25 parking fees in my current rent. I will love to speak to owner as well and try to convince. Inflation is so high at the moment, I am not able to afford this. And also I can not park outside as well, because when I get the apartment parking was the priority for me...

The Building Manager responded:

Are you sure your paying \$25 parking fees? Then you would've got the notice. The notice is for \$75 from \$50. You certainly can try asking the owner but a lot of tenants even long term tenant have asked and all didn't succeed. But if I gave you parking for free and he finds out. I'm in deep shit. So just make sure you are paying \$25 for parking. Original parking was \$50 but went up to \$25 to \$75.

The Agent testified that in the March 31, 2023 message from the Building Manager, the email address provided is the Building Manager's work email address, not the proper e-mail address for payments to be made. The Agent testified that payments made to the Building Manager's work email would not be received by the Landlord. The email address listed is [building manager]@[Landlord].ca. The Agent testified that since the Building Manager gave his own email address to collect funds, there is clearly no agreement that parking is included in the rent.

The Agent testified that in the March 31, 2023 message exchange, the Building Manager states: "Are you sure your paying \$25 parking fees?". The Agent testified that this shows that there was no agreement with the building manager for free parking.

The text message conversation between the Building Manager and Tenant U.U. continues as follows:

- April 1, 2023:
 - Building Manager:
 - Hey [Tenant U.U.], sorry to bother you man but I need to know if your taking the parking spot. If so, you'll need to pay \$75/month. I know you don't want to pay that and everyone else was pretty pissed off that it went up that much but it's a business he runs and it is what it is. You're hard up on cash just like everyone else including myself so... how bout we work something out between us yea? I'll make sure this doesn't come back on you and I don't get in

shit for it. If you have \$80 to send me, we'll call it that and you'll have your parking for however long you want it for.. nothing more nothing less.. and I'll make sure the owner doesn't find out. U cool with that?

- And if none of those work for you then, parking on the street is a better option. Up to you though
- Tenant U.U.:
 - Hey [Building Manager], I am not sure why they are making an issue for parking now. I am paying for parking already as decided between us before \$25/month, a \$50 increase in parking without any written notice in this inflation is too difficult for me I wanna speak to the owner myself one time to see if it can be resolved if not then I can decide if I want to give up my parking spot or not.
- Building manager:
 - Ok so it was decided between us two that I had you paying for parking? Because if it was just between you and I, then you would've had to pay me \$25 month instead of the original \$50 that everyone else was paying but has since been increased to \$75. I can send you the notice which was given back in November I believe. And if you were including \$25 on top of your monthly rent then it goes to him and he'd see it as an over payment by you, because he knows that parking has always been \$50 but has now increased it to \$75. Do you know what im saying? So in hindsight, between you and I, I said you can save an extra \$25/month on parking but your just pay me the \$25 instead of adding to your rent get it? There's absolutely no way he's going to let anyone pay \$25 for parking. 1 million % no. Does that all make sense to you? So you've been giving your parking money to my boss instead of me.. lol man I could've used that extra \$25/month
- Tenant U.U.
 - Hey [Building Manager], call me when you have time. I am not able to understand your message.

Tenant U.U. testified that at the start of the tenancy he took the Building Manager's word about parking being included in the rent and did not pay the Building Manager additional money for that parking. Tenant U.U. testified that even when the Building Manager asked for a side deal in the April 1, 2023 message, he did not agree and stated that he wanted to speak with the owner.

Tenant U.U. testified that he did not understand what the Building Manager was saying in the above messages. Tenant U.U. testified that it was his understanding that at the start of the tenancy the Building Manager could not give him the \$25.00 per month rent concession but was able to include parking in the rent which normally cost \$25.00 per month. Tenant U.U. testified that he did not pay either the Landlord nor the Building Manager anything extra for parking.

The Agent testified that in the April 1, 2023 text exchange between Tenant U.U. and the Building Manager, the Building Manager states that if the Tenants don't pay, they can park on the street. The Agent testified that this shows that there was no free parking agreement.

Tenant U.U. testified that the Landlord sent him and all tenants at the rental building an email dated June 15, 2023 which was entered into evidence and states:

For security reasons, we are conducting an inventory of vehicles in the underground parking at [the rental property].

Please identify your parking spot and vehicle (make/model and license plate number) parked in the underground parkade and the commencement date of your parking in the underground parkade.

In particular, if you are parked in **spots 3, 6, 8, 22 and 24, we will be towing your vehicle if we do not receive the above information within 24 hours of this message....**

Tenant U.U. testified that he responded to the above email with the details requested therein. The responding email was entered into evidence. Tenant U.U. testified that he received a responding email from the Landlord. The June 15, 2023 responding email from the Landlord was entered into evidence and states:

You have been in properly parking in spot #24 without paying us the parking fee owed to us under your tenancy agreement. Your tenancy agreement that you signed (see attached) does not state that you get any free parking or any discounts.

The previous Building Manager [name redacted], employment was terminated on June 13, 2023. **[The Building Manager] was not authorized by us to give any tenant free parking rent or a discounted rent and he was certainly not authorized to receive and rent to his personal account.**

Furthermore, **you have not paid us the \$100 fob deposit.**

We have reported [the Building Manager] to the police and we are investigating his parking schemes. All tenants (including yourself) were notified of his employment termination on June 13, 2023.

If you do not pay us for the parking benefit you have received (see the invoice e-mail to you) plus the \$100 Fob deposit (separate invoice sent) we will begin eviction proceedings against you a monetary order for the parking fee arrears and unpaid fob deposit. Furthermore, we will have your vehicle towed from the parkade and permanently terminate your access to the parkade. Please send the parking arrears and Fob deposit immediately to [email redacted].

Tenant U.U. testified that between March and June 2023 he did not receive any messages from the Landlord about parking and did not realize it was a problem until the June 2023 messages from the Landlord.

Both parties agree that Tenant U.U. initially agreed to pay back the parking fees accrued between August 2021 and June 2023. The Tenants entered into evidence an email from the Agent dated June 15, 2023 at 9:26 pm which states that the first part of the Agent's proposal of resolution of the parking fee issues is for the Tenants to pay June's parking fee of \$75.00 plus the \$50.00 fob deposit immediately.

Both parties agree that on June 15, 2023 at 9:31 p.m. the Tenants paid the Landlord \$125.00. The e-transfer for same was entered into evidence. Tenant U.U. testified that this was for the fob deposit. The Agent testified that this was comprised of a \$75.00 parking fee for June 2023 and a \$50.00 fob deposit as outlined in the June 15, 2023 9:26 pm email. Tenant U.U. testified that after sending the above payment, he got legal advise and then decided not to repay the parking arrears because he does not believe he owes them.

Tenant U.U. entered into evidence an email from the Agent dated June 19, 2023 which states that if Tenant U.U. does not sign the parking addendum agreement in which the Tenant agrees to pay for parking arrears dating back to the start of the tenancy, the Landlord will have the Tenants' car towed. Both parties agreed that the Tenants did not sign the aforementioned document and continued to park in the parking lot at the rental building. Both parties agree that the Landlord had the Tenants' car towed. Tenant U.U. entered into evidence an invoice from the towing company showing that the Tenants' car was towed on June 21, 2023 and that the Tenants were billed \$208.90 for this service.

Tenant U.U. testified that he is seeking to recover the \$125.00 paid to the Landlord on June 15, 2023 and the \$208.90 towing fee. Both parties agreed that since June 2023 the Tenants have not parked in the parking lot at the rental property.

The Agent testified that the Tenants owe parking fees totalling \$1,275.00 accrued between August 15, 2021 and May 31, 2023. Tenant U.U. testified that he and the Landlord were the victims of the Building Manager's scam and he is not responsible for the Landlord's losses. The Agent entered into evidence an invoice for parking fees which shows that from August 2021 to October 2022 parking fees were \$50.00 per month and that from November 22, 2022 to June 2023 parking fees were \$75.00 per month.

Analysis

Section 91 of the Act states that the common law respecting landlord and tenants applies in British Columbia.

The “Indoor Management Rule” is well established in Canadian law. The common law rule holds that parties dealing with a corporation, acting in good faith and without knowledge of any irregularity, are entitled to assume that a corporation’s internal policies and proceedings have been followed and complied with.

If a third party acts in good faith with a person whom they trust represents a corporation, then the corporation is bound by the transaction whether or not the person did not actually have the power to bind the corporation.

Based on the testimony of Tenant U.U. and the documentary evidence submitted by the Tenants, I find that when this tenancy agreement was entered into, Tenant U.U. was unaware of the Building Manager’s various parking scams and honestly believed that he entered into a tenancy agreement in which parking was included in the rent. I find that the August and September 2021 messages between the Building Manager and Tenant U.U. show that the Building Manager agreed to give the Tenants a parking space and that as of September 30, 2021, the Building Manager gave the Tenants parking space #24.

I find that in the text communications between the Building Manager and Tenant U.U. at the start of this tenancy, there is no mention about any additional payments outside of rent or that the Tenants were required to pay either the Landlord or the Building Manager for parking. Given that parking was provided free of charge from the start of this tenancy without any issue until March of 2023, I find that the Building Manager agreed to provide the parking to the Tenants as part of rent. I find that this was a verbal agreement made outside the written parameters of the tenancy agreement. As set out in section 1 of the Act, a tenancy agreement is defined as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and service and facilities. I find that this tenancy agreement contained the oral term, whether express or implied, of parking included in the rent. Therefore, in this case, the parties are bound by the terms of their oral agreement and written agreement, including any implied or express terms.

I find that while the Building Manager may not have had authority to grant the Tenants free parking, the indoor management rule allows the Tenants to rely of the information provided to the Tenants by the Building Manager.

I find that the March 31, 2023 and April 1, 2023 messages between the Building Manager and Tenant U.U. support the good faith intentions of the Tenants when entering into this tenancy agreement. I find that the Tenants were not aware that the Building Manager was acting in a fraudulent manner until the March 31- April 1, 2023 messages. I find that in the April 1, 2023 message from the Building Manager, it is clear that the Building Manager has no clear understanding about what agreement was reached with Tenant U.U. as the Building Manager asks Tenant U.U. what was “decided” and provided different options as to what could have been agreed upon.

I find, on a balance of probabilities, that the Building Manager did a poor job of keeping records regarding the various arrangements he made with different tenants. I find that

the Building Manager's messages do not offer any clarity on what was agreed between the Building Manager and the Tenants as the Building Manager does not seem to have any solid recall of events. I find that the Building Manager's messages do not prove that there wasn't an agreement for free parking, just that the Building Manager did not have a reliable memory regarding the agreements made.

I find that in the April 1, 2023 message the Building Manager tried to collect additional funds from the Tenants for parking which, based on the messages, is clear would not be properly provided and report to the Landlord. Tenant U.U. did not accept this offer and instead asked to speak with the owner. I find that had the Tenants been aware from the start of the tenancy that the Building Manager was acting improperly regarding the collection of parking fees, Tenant U.U. would not likely have asked for written notice of the parking fee increase or have asked to speak with the owner about the increase.

I accept the testimony of Tenant U.U. that rent was agreed to be included in rent. I find that as set out in the Indoor Management Rule, the Tenants were entitled to rely on the Building Manager when this agreement was made, even though the Building Manager did not have authority to offer free parking. I find that in entering into this tenancy agreement, the Tenants acted in good faith and that it was the Building Manager who was acting in bad faith.

I find that the indoor management rule protects the Tenants up until the point at which they learned that the Building Manager was acting in bad faith. I find that the Building Manager's April 1, 2023 messages put Tenant U.U. on notice that the Building Manager was acting dishonestly with respect to collecting parking fees and so the Tenants are not responsible for fees incurred up to March 31, 2023 but are responsible for fees occurring from April 1, 2023 onwards. I find that the Tenants are responsible for parking fees from April to June 2023.

Based on the June 15, 2023 offer made by the Agent to the Tenants and the payment of \$125.00 shortly thereafter, I find that the Tenants paid the Landlord \$75.00 for June 2023's parking and \$50.00 for the garage fob deposit. As June 2023's parking fees have already been paid, I find that the Tenants only owe fees of \$75.00 per month for April and May 2023 for a total of \$150.00. The Tenants' application for the return of the \$125.00 is dismissed as I have found that the Tenants owed June 2023's parking payment. I find that the Landlord was permitted to ask for a fob deposit and the Tenants are not entitled to the return of that deposit until they return the garage fob to the Landlord. I find that the Tenants are not entitled to free parking going forward and if they elect to park in the rental property parking lot, they must pay the Landlord the Landlord's standard parking rate. In accordance with my above findings, the Tenants claims for services and facilities and for an Order to comply with the Act are dismissed without leave to reapply.

I find that the Tenants are not entitled to recover the towing fees as the Tenants failed to pay for April and May 2023's parking fees and so the Landlord was permitted to tow their vehicle for failure to pay parking fees. I also find that the Tenants failed to mitigate their damages as they elected to park in the parking lot after they were told that they

would be towed if they continued to park in the parking lot without paying arrears. I find that the Tenants could have mitigated their damages by not parking in the parking lot until the Tenants claims were adjudicated. The Tenants claims for towing costs are dismissed without leave to reapply.

As the Tenants were not successful in their application for dispute resolution, I find that they are not entitled to recover the \$100.00 filing fees from the Tenants. As the Landlord was successful in the Landlord's Application for Dispute Resolution, I find that the Landlord is entitled to recover the \$100.00 filing fee from the Tenants.

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$250.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act	\$150.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$250.00

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: February 21, 2024

Residential Tenancy Branch