



Order under Section 69
Residential Tenancies Act, 2006

File Number: SWL-53335-21

In the matter of: 206, 969 FELIX AVENUE
WINDSOR ON N9C4C7

Between: Macfelix Property Management Inc.

Landlord

and

Babila Suresh
Suresh Vilameswaran

Tenants

Macfelix Property Management Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Suresh Vilameswaran and Babila Suresh (the 'Tenants') because they, another occupant of the rental unit or someone they permitted in the residential complex have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by way of video conference on October 25, 2021. The Landlord's legal representative Luisa Goncalves and the Tenants attended the hearing.

Determinations:

1. The Landlord's application is based on an N5 notice served to the Tenant on May 31, 2021 with a termination date of June 28, 2021.
2. The rental unit is located in a 10-storey apartment building consisting of 70 apartments.

Landlord's evidence:

3. The Landlord's N5 notice alleges that the Tenant substantially interfered with the reasonable enjoyment of the Landlord and other residents by parking their vehicle within the residential complex without paying or registering for a parking spot with the Landlord.
4. The Landlord entered into evidence a copy of the Tenants lease agreement (LL exhibit #1). The lease agreement does not indicate that the Tenant is entitled to free parking and sets out the terms and conditions required for parking within the residential complex. The lease requires that all residents register their vehicle with the Landlord and obtain a parking sticker or pass. The lease agreement was signed by the Tenant and the prior Landlord on June 2, 2008.

5. The Landlord's legal representative advised that the residential complex consists of both underground and aboveground parking lots. The underground parking spots are numbered and assigned. The above ground parking spots are not numbered, but Tenants are still required to pay for a parking space and register their vehicle with the Landlord.
6. The parties agree that the Tenant has been parking in an outdoor parking spot on a daily, basis. The Landlord's N5 notice alleges that on or about May 11, 2021 the Tenants vehicle was parked in an outdoor parking spot. The Landlord submitted into evidence an incident report completed by the onsite superintendent confirming the alleged incident on May 11, 2021. (LL exhibit #2).
7. Since serving the N5 notice on May 28, 2021, the Landlord testified that the Tenant had continued to park his vehicle in the aboveground parking lot each day from May 29 to June 4, 2021. The Tenant has also continued to park aboveground parking lot each day since filing the L2 application.

Tenant's evidence:

8. The Tenant Suresh Vilameswaran provided oral testimony on behalf of the Tenants. The Tenants do not dispute the contents of the Landlord's N5 notice or that they continued to park in the outdoor parking spaces provided and thus, did not void the N5 notice.
9. Mr. Vilameswaran agrees that the Tenants have not paid or registered for parking and that their lease agreement is silent as to whether the Tenants have a parking spot included in their monthly rent.
10. Mr. Vilameswaran testified that the Tenants have been parking their vehicles in the outdoor parking spots without paying any charges or registering their vehicles since they moved into the rental unit in 2008. The Tenant argues that the old landlord never raised the issue of unauthorized parking and that when he moved into the residential complex in 2008, he was told that he was allowed to park one vehicle free of charge and would only have to pay if the Tenants required a second parking spot.
11. The Tenant further argues that when the new Landlord acquired the residential complex in 2018, they did not raise the issue of unauthorized parking until January 2021.
12. On cross examination, the Tenants agreed that they have no written authorization from either the prior or current Landlord advising them that a parking spot is included in their rent.

Analysis:

13. Sections 18 and 64(1) of the *Residential Tenancies Act, 2006*, (the Act) state.

18. Covenants concerning things related to a rental unit or the residential complex in which it is located run with the land, whether or not the things are in existence at the time the covenants are made.

64 (1) A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

14. Based on the evidence before the Board, I am satisfied that the Tenant does not have a parking space included in their monthly rent. The lease agreement submitted into evidence makes no reference to parking being included in the monthly rent or that a parking space is free of charge. Further, the Tenant was unable to provide any evidence from the prior landlord confirming that one parking space is included. The Tenant did not summons any witnesses from the prior landlord to give testimony regarding any verbal agreement that may have previously taken place.
15. Although I accept the Tenant's argument that the prior landlord did not enforce the landlord's parking policy, I find that this alone is not sufficient to alter the lease agreement and terms signed by the parties.
16. This is not a situation where the new Landlord is attempting to alter the terms of the tenancy, but rather, enforce the original agreement entered into by the parties. I find it would be unfair to not allow the current Landlord to enforce their rights simply because the prior landlord neglected to do so.
17. As such, I am satisfied on a balance of probabilities that the Tenant has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord. The Tenant continuing to park in an unauthorized manner interferes with the Landlord's management of the residential complex and is in violation of the parking rules and regulations.

Relief from eviction:

18. The Landlord is not seeking termination of tenancy, but rather a conditional order requiring the Tenant to comply with the Landlord's parking rules and regulations.
19. The Landlord is also mindful that the Tenant has resided in the rental unit for over 10 years and as such, is seeking only half of the \$186.00 filing fee.
20. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

It is ordered that:

1. On or before January 31, 2022 the Tenants shall pay the required monthly parking fee and provide the Landlord with all information necessary to register their vehicle
2. If the Tenants do not comply with paragraph 1 of the order, then commencing February 1, 2022 the Tenants shall refrain from parking their vehicle in the residential complex unless they have registered for a parking space.
3. If the Tenants fails to comply with paragraph 2 of this order, the Landlord may, without notice to the Tenant and within 30 days of the breach, apply to the Board pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant
4. The Tenants shall also pay to the Landlord \$93.00 which represents half of the Landlord's application filing fee on or before January 17, 2022.
5. If the Tenants do not pay the Landlord the full amount in accordance with paragraph 4, the Tenants will start to owe interest. This will be simple interest calculated from January 18,2022 at 2.00% annually on the balance outstanding.

January 6, 2022
Date Issued



Fabio Quattrociochi
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.