



Order under Section 130 Residential Tenancies Act, 2006

Citation: Dwyer v Gjeta, 2024 ONLTB 21592

Date: 2024-03-28

File Number: LTB-T-061108-22

In the matter of: 6, 83 Albert Ave
Toronto Ontario M8V2L6

Between: Iain Dwyer Tenant

And

Edmond Gjeta Landlords
BR Holdings

Iain Dwyer (the 'Tenant') applied for a reduction of the rent charged for the rental unit due to:

- a reduction or discontinuance in services or facilities provided in respect of the rental unit or the residential complex.

This application was heard by videoconference on January 11, 2024.

The Tenant and the Landlord attended the hearing.

Determinations:

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant \$478.94, which represents:

- \$425.94 for a rent rebate.
- \$53.00 for the cost of filing the application

Evidence and Analysis

2. The Tenant testified he entered into a lease agreement for this rental unit on October 1, 2010. At that time the residential complex was owned by a different landlord. The Tenant stated the present Landlord purchased the building about two or three years ago.
3. The Landlord testified he purchased the building in June 2021.
4. The Tenant submitted a copy of his original lease agreement. On page 4 of the agreement, clause (b) states: "Number of parking spots is included in this lease – 1 car. If additional parking is required by the tenant in the future, then an additional charge will apply."
5. It is uncontested that the residential complex contains 6 rental units. The parking lot ('the lot') for the building contains 6 parking spots. The spots are not specifically assigned but each Tenant has one spot for their use.
6. The Tenant testified that he parked in the lot daily until he sold his car in either 2014 or 2015. After that time, he used the lot periodically for his guests when they came over to visit.
7. The Tenant submitted a text conversation with the Landlord on February 13, 2022, wherein the Tenant asks about junk being removed from the lot as it is blocking a space. The Tenant states that normally this is not an issue because he doesn't have a car but that he has a friend visiting and with the loss of a spot, there is nowhere for his friend to park. The Landlord responded by advising the Tenant "moving forward just to let you know is no visitor parking spot available".
8. The Tenant submitted another text conversation with the Landlord on June 10, 2022. In this exchange, the Landlord sent the Tenant a photo of a vehicle seeking information on who the vehicle belonged to. The Tenant responded that the vehicle is that of a friend who spent the night. The Landlord reiterates that there are no visitor spots and that moving forward the car will be towed at the owner's expense. The Tenant responded to the Landlord's message as follows, "[i]t isn't a visitor spot. It's my spot. I've had it the whole time I've lived here."
9. The Tenant further testified that he had a telephone conversation with the Landlord on or about July 24, 2022, wherein the subject of parking came up again. The Tenant stated that the Landlord advised that there is no visitor parking and visitors would be towed. The Tenant testified at this time, the threat of his friend's vehicles being towed caused him to tell his friends to park elsewhere. The Tenant's position is that his lease included one parking spot and did not specify that the Tenant only must use that spot. Therefore, it is the Tenant's position that he should be able to use 1 spot in the lot for any car authorized by the Tenant.
10. The Tenant testified that his partner moved in with him in August 2023. The Tenant also testified that his partner owns a vehicle and has parked in the lot since October 2023 without issue.

11. The Landlord testified that at approximately midnight on June 10, 2022, he received a phone call from the tenant residing in unit #2 of the residential complex complaining that the lot was full and there was no place to park their vehicle. It was this complaint that prompted the Landlord to take the photo of the vehicle and to seek information from the Tenant on who the vehicle belonged to. The Landlord testified that he has to monitor who is using the parking to ensure no unauthorized vehicles use the lot and create issues for the tenants. The Landlord testified that he was given a list of tenants and vehicles when he purchased the complex and that each tenant has a spot for their personal use not for the use of visitors.

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12. I find, based on a balance of probabilities, that the Tenant's parking facilities were reduced from the period of July 24, 2022 to September 30, 2023. I say this for the following reasons.

13. Section 202 (1) of the *Residential Tenancies Act, 2006* (the 'Act') states the following:

In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

(a) may disregard the outward form of a transaction or the separate corporate existence of participants; and

(b) may have regard to the pattern of activities relating to the residential complex or the rental unit.

14. When applying s. 202(1) of the *Act* to the Tenant's lease agreement I find that the real substance of the agreement was to allow the Tenant to have use of one parking spot and that the spot is not limited to the Tenant's own vehicle only. The lease specifically states "[n]umber of parking spots is included in this lease – 1 car". The lease does not state that the "1 car" must belong to the tenant. When looking at the pattern of activities relating to parking, I accept the Tenant's testimony that the Tenant regularly used the parking spot allotted to him even after the Tenant no longer had his vehicle and that the parking spot was frequently used to accommodate a vehicle for visiting guests. This open parking spot was used by the Tenant without issue unit June 2022.

15. Pursuant to section 18 of the *Act* "covenants concerning things related to a rental unit or the residential complex in which is it located run with the land, whether or not the things are in existence at the time the covenants are made". This means that the Landlord stepped

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into the shoes of the former landlord and was subject to the actual or implied agreement made between the Tenant and the former landlord. Since the Tenant was always able to use his allotted spot for one vehicle, it was incumbent upon the new Landlord to uphold that agreement. There was no evidence before me to suggest that the Tenant and the Landlord came to a new agreement which limited the Tenant's parking spot to his personal vehicle only.

16. Both the Tenant and the Landlord agree that there are 6 spots in the lot for the 6 units in the building. The Landlord does not dispute that he told the Tenant the parking spot allotted to him was not to be used for guests to park and that the Landlord also advised that any vehicle not belonging specifically to the Tenant would be towed. The Tenant did not have a vehicle and as such, his guests used one of the 6 spots in the lot and did not occupy an additional spot. The Tenant was fearful of his guests being towed from the lot and so he asked them to park elsewhere for the period of July 24, 2022 until his partner moved in and started using the lot regularly in October 2023. Therefore, I find the Tenant's use of his parking facilities were discontinued for this period by virtue of the Landlord not allowing the Tenant's parking spot to be used.

Remedy

17. In order to quantify the remedy available to the Tenant, I must determine if the discontinuance of the parking spot is reasonable in the circumstances.
18. Section 39(3) of O. Reg 516/06 under the Act sets out the rules that apply in respect of making a finding relating to reduction of the rent charged based on a discontinuance or reduction in services or facilities and states the following:

If a service or facility is discontinued and the discontinuance was not reasonable in the circumstances, the rent shall be reduced by an amount that takes into account the following matters:

 1. The value of the service or facility, including the cost to the tenant or former tenant of replacing the discontinued service or facility.
 2. The effect of the discontinuance on the tenant or former tenant.
19. I do not find the Landlord's actions reasonable in these circumstances. Rather than speak to the Tenant about what his parking practices were prior to the Landlord purchasing the residential complex, the Landlord unilaterally made a decision that no one other than the Tenant himself could park in the parking lot. This was despite the fact that the Tenant had the use of one spot and was not using that spot to park his own vehicle. While I understand the Landlord has a duty to ensure that his tenants are not inconvenienced by unauthorized vehicles using the lot, this could have been achieved by open communication with the Tenant or perhaps by installing designated spot numbers so that each tenant of the complex knows exactly what spot they are to use.
20. In terms of the effect on the Tenant, he testified that during the period he no longer had access to his parking spot his visiting guests had to park on the street. The Tenant testified that the time limit for street parking is only 3 hours and there were times when his guests received parking tickets for exceeding this time limit. The Tenant stated that his guests sometimes chose to use public transit rather than driving due to the parking issue and that his apartment is not far from a public transit stop.
21. The Tenant did not present evidence that he sought out another paid parking lot for his guests to use. However, I can consider the value of the facility to the Tenant and the effect of the discontinuance on the Tenant when determining a rent reduction. Considering the inconvenience caused by the loss of his parking and my knowledge of like similar cases, I find a rent reduction of \$30.00 per month to be appropriate in these circumstances.
22. The Tenants parking was discontinued from July 24, 2022 to approximately September 30, 2023. This period equates to 14 months and 6 days or \$425.94.

23. This order contains all of the reasons for the decision within it and no further reasons will be issued.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$478.94. This amount represents:
 - \$425.94 for a rent rebate for the period of July 24, 2022, to September 30, 2023.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by April 30, 2024.
3. If the Landlord does not pay the Tenant the full amount owing by April 30, 2024, the Tenant may recover this amount by deducting \$478.94 from the rent due for May 2024.

April 18, 2024

Date Issued

Melissa Anjema

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto
ON M7A 2G6

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

