



Order under Section 130 Residential Tenancies Act, 2006

Citation: Tekin v Sawera Property Management, 2024 ONLTB 8627

Date: February 28, 2024 **File Number:** LTB-T-010585-23 and LTB-T-075496-22

In the matter of: 22 Rossander Court
Scarborough ON M1J2B7

Between: Bera Tekin Tenants
Begum Sena Tekin

And

Sawera Property Management Landlord

Bera Tekin and Begum Sena Tekin (the 'Tenants') applied in a T3 Application 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 16, 2024.

The Landlord's Agent, Muhammad Ahmad, and the Tenants, Bera Tekin, and, Begum Sena Tekin, attended the hearing.

Determinations:

Preliminary Issue – Some Late Disclosure Allowed

1. The Landlord's evidence was uploaded to the portal only three days before the scheduled hearing date. It was the position of the Landlord's agent that this evidence was also provided to the Tenants by email, however the Tenants denied receiving it and the Landlord's agent was unable to direct the Board to any proof that the evidence had been emailed to the Tenants. Accordingly, this evidence will be given little weight.

2. The Tenants did not upload any evidence in support of their application, however at the hearing the Tenants explained that they had also filed a T2 Application regarding the same facts and had uploaded their evidence to that file. This evidence consisted of a copy of the lease agreement and a series of pictures of the driveway area of the rental unit. The Landlord's agent confirmed that they had received these pictures from the Tenant via email and accordingly they will be considered in our decision.
3. The Tenants also wished to provide email correspondence in support of their position. The Tenants were advised to upload this correspondence after the completion of the hearing if they wished it to be considered, however no additional documents were uploaded by the Tenants after the conclusion of the hearing.

Preliminary Issue – T3 Application and T2 (LTB-T-075496-22) Combined.

4. During the hearing the Tenants explained that they had been uncertain which Application to use to resolve this matter and had filed both a T3, the file that is before us today, and a T2 application, with the file number LTB-T-075496-22. The Tenants did not pay the filing fee for the T2 application. As the two applications concerned the same issue, the alleged removal of garage parking, we find that it is appropriate to combine both Applications.

The T3 Application.

5. The Tenant claimed that the garage parking had been discontinued.
6. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenants a total of \$1800.00 representing a rent abatement of \$300.00 for a period of 6 months.
7. We are satisfied that the garage parking is a service or facility under the *Residential Tenancies Act, 2006* (the "Act"). Parking and related services is explicitly listed as a service or facility under the Act in Section 2(1)(b).
8. The parking situation at this rental unit, is in two places: the driveway, and the garage. We accept based on the evidence, that the garage portion of the parking was temporarily unavailable at all, starting November 1, 2022. We are satisfied that the T3 application was filed within one year of the cause of action.
9. The discontinuance or reduction was not reasonable in the circumstances. The reduction was not due to any capital improvement project, or due to any factor outside of the control of the Landlord, rather the Tenants access to parking was reduced because the Landlord neglected to make arrangements to allow the Tenants to access the garage.

10. The rent is reduced to \$2400.00 starting November 1, 2022, the day that the discontinuance or reduction first occurred, and ending on April 30, 2023 the date the service was restored.
11. In addition, the Tenants are entitled to a rebate of the rent unlawfully collected by the Landlord for the period of time starting on November 1, 2022 when the garage parking was reduced, and ending on April 30, 2023 when their access to parking was restored.

The Agreed facts

12. The rental unit is the main floor of a house, the rental unit is part of a residential complex which also contains a basement unit occupied by another Tenant.
13. The Tenants lease began on November 1, 2022, at a lawful monthly rent of \$2700.00. The residential lease agreement indicates that the Tenants are to be provided with one parking space in the garage and two parking spaces in the driveway at no additional cost.
14. It was not disputed by the Landlord that the Tenants had been unable to access the garage parking for a portion of the tenancy, as the entrance to the garage was blocked by a vehicle belonging to the downstairs Tenant. The Landlord also agreed that a reduction of rent was appropriate, However, the Landlord and Tenant disagreed on the duration of the parking reduction and the appropriate amount of any reduction.
15. It was also agreed that in November of 2022 the Landlord offered to provide a carport for the Tenants' use, or to reduce the monthly rent by \$50.00 to compensate for the loss of the garage space. The Tenants declined both offers and continued to pay the regular lawful rent.

The Tenants' evidence.

16. The Tenants evidence was that the parking was reduced on November 1, 2022, for a period of approximately six months.
17. The Tenants testified that the garage parking was only restored in April of 2023 after the Landlord constructed an extension to the driveway. It was the Tenants position that work on this extension began in December of 2022, but was delayed by the onset of winter and required several months to complete.
18. It was also the Tenants' position that even after the extension was completed the basement tenant did not begin to use this extension until April of 2023, at which time the Tenants once again enjoyed unrestricted access to the garage.

19. The Tenants are seeking a rent reduction of \$300.00 per month for a period of 6 months starting November 1, 2023. It is the Tenant's position that comparable units which did not provide garage parking were approximately \$300.00 less per month, and the Tenant had only selected the rental unit due to the garage provided. Additionally, the Tenants' take the position that the reduction in parking occurred during the winter months and being required to park outdoors caused damage to the Tenants' vehicle.

Landlord's evidence

20. The Landlord took the position that prior to the start of the lease agreement with the Tenants, the garage parking had not been utilised, as the prior Tenant used the space as a home gym. The Landlords Agent testified that because the prior Tenant did not use the garage, there had never been a problem with access to the garage. The Landlords Agent testified that the Landlord did not speak to the basement Tenant when the Tenants took possession, or at any time prior to discuss how parking would be allocated and access to the garage handled.
21. It was the Landlord's position that the garage parking was restored in early February of 2023 after the Landlord installed a driveway extension. However, the Landlord's agent did not direct us to any documents in support of this date.
22. It was the Landlord's position that a rent reduction of \$50.00 per month for three months would be appropriate, in support if this the Landlord's agent submitted that this represents a fair price for a parking spot within the local market. It was the Landlord's position that they were the victims as this was a dispute between the Tenants in which the Landlord should not have been involved.

Analysis

23. On balance, we prefer the evidence of the Tenant over that of the Landlord.
24. The Landlord and Tenant agree on many of the facts, and the Landlord accepts that the Tenants parking was reduced starting on November 1, 2022. The only issue in dispute is the duration of the reduction and the appropriate remedy.
25. During their examination in chief the Tenants provided testimony that that even after the driveway extension was completed, the basement tenant had continued to restrict their access to the garage until April of 2023. The Landlords Agent did not challenge this testimony on cross examination.
26. Rather, the Landlords Agent provided testimony that the driveway extension was *completed* in February of 2023, and took the position that this act resolved the matter. The Landlord also declined to call the basement Tenant as a witness during the hearing.

27. While it is possible that the extension was completed in the timeline indicated by the Landlord this alone does not resolve the matter, if the basement Tenant continued to obstruct access to the garage as the Tenants testimony indicates.
28. We are prepared to accept that it likely took the basement tenant some time to adjust to the new extension, accordingly we find that the garage parking was restored on May 1, 2023.
29. This is a reduction in services and the rules governing rent reductions are set out in s.39 of O. Reg. 516/06 (6) which states: (6) If a service or facility is reduced, the amount of the reduction of rent shall be a reasonable proportion, based on the degree of the reduction of the service or facility, of the amount of the reduction in rent that would have been determined under subsections (2) to (5) had the service or facility been discontinued. O. Reg. 516/06, s. 39 (6).
30. In this case the Tenants' had no access to their garage parking for a period of six months. Considering this, and taking into account the testimony of the Tenant that they only selected this rental unit due to the garage parking, and their credible testimony that comparable units without a garage were \$300.00 per month more, we find that a rent reduction of \$300.00 per month is appropriate.

It is ordered that:

1. The lawful monthly rent effective November 1, 2022 is reduced to \$2400.00 until May 1, 2023.
2. The total amount the Landlord shall pay the Tenant is \$1853.00. This amount represents:
 - \$1800.00 for a rent rebate for the period from November 1, 2022, to April 30, 2023.
 - \$53.00 for the cost of filing the application.
3. The Landlord shall pay the Tenant the full amount owing by March 10, 2024.
4. If the Landlord does not pay the Tenants the full amount owing by March 10, 2024, the Landlord will owe interest. This will be simple interest calculated from March 11, 2024, at 7.00% annually on the balance outstanding.
5. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

File Number: LTB-T-010585-23 & LTB-T-075496-22

6. If the Landlord does not pay the Tenant the full amount owing by March 10, 2024, the Tenant may recover this amount by deducting \$300 from the rent each month from April 1, 2024, to September 2024 and \$53 in October 2024.

February 28, 2024

Date Issued

Michelle Tan

Member, Landlord and Tenant Board

Reid Jackson

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.