

Introduction

- [1] On January 25, 2024 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application seeks a return of money paid for a parking spot pursuant to clause 85(1) of the *Residential Tenancy Act* (the "Act").
- [2] The Tenant is seeking \$800.00 be returned.
- [3] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with clause 100(1) of the *Act*.
- [4] On February 20, 2024 a teleconference hearing was held at 1:00 p.m. before a Residential Tenancy Officer (the "Officer"). The Tenant appeared with a witness. A representative appeared on behalf of the Landlord (the "Representative").

Issue to be Decided

- i. Is the Tenant entitled to a return of money paid for a parking spot?

Summary of the Evidence

- [5] On May 18, 2023 the parties entered into a written fixed term tenancy agreement for the Rental Unit. The fixed term is from June 1, 2023 to May 31, 2024. The Rental Unit is situated in an 18-unit apartment building (the "Residential Property"). Rent is \$1,200.00 due on the first day of the month. A security deposit of \$1,200.00 was paid.

Tenant's Evidence and Submissions

- [6] The Tenant testified that the tenancy agreement includes 1 parking spot which her co-tenant uses. The Tenant testified that in June 2023 the Representative and herself had a verbal agreement for an additional private parking spot. The Tenant testified that she paid \$1,200.00 (\$100.00 per month) for her own parking spot. The Tenant testified that she believed she would receive her own private parking spot by August, however, it was not until October 29, 2023 that she was given her own parking spot.
- [7] The Tenant testified that she is seeking a return of \$800.00 from the \$1,200.00 she paid the Representative. The Tenant testified that she had to use the "guest parking" which was not always available for June, July, August, September and October 2023. The Tenant testified that she is vacating the Rental Unit on February 21, 2024, and would like March, April and May 2024 returned as well. The Tenant testified that the Landlord breached their verbal agreement.
- [8] The Tenant's witness provided testimony regarding being a witness and having knowledge of the Tenant paying \$1,200.00 in June 2023 for parking.

Landlord's Evidence and Submissions

- [9] The Representative did not dispute the Tenant paying \$1,200.00 for a parking spot. The Representative testified that the Tenant could have paid \$100.00 monthly and was not required to pay the lump sum. The Representative testified that the tenancy agreement permits only one parking spot, which was used by the co-tenant. The Representative testified that there are two buildings (one being the Residential Property) which share a parking lot. The Representative testified that the Tenant was aware that there was no parking spot available close to the Residential Property at the time. The Representative testified that once one became available the Tenant was informed.

- [10] The Representative testified that it was not until October 2023 that parking spot "G" became available, which was closer to the Residential Property. The Representative testified that the Tenant had access to parking spots, but the parking spots were closer to the other building beside the Residential Property. The Representative testified that their agreement was upheld and that she is not disputing returning March, April and May 2024 to the Tenant.

Analysis

- [11] The Application is made in accordance to section 75 of the *Act*. In such applications it is the person making the claim that has the burden to prove, on a balance of probabilities, any and all claims made. This means that the party must provide the decision-maker sufficiently clear, convincing and cogent evidence to prove their claim(s). The relevant law is as follows:

85. Powers of the Director

- (1) *After hearing an application, the Director may make an order*
- (d) *requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the tenancy agreement;*
- (i) *directing a landlord to pay to a tenant an amount as compensation for inconveniences as a result of a contravention of this Act or the tenancy agreement, and authorizing the tenant to offset that amount against future rent.*

- [12] The Officer concludes that the Tenant is entitled to a return of \$300.00.

- [13] The Officer comes to this conclusion because the parties entered into an oral agreement for an additional parking spot as the tenancy agreement only included 1 parking spot, which was occupied by the co-tenant. The undisputed testimony reveals that the Tenant paid \$1,200.00 for the additional parking for the year. The parties provided conflicting details and ideas to what the oral agreement detailed. The Officer finds that the Tenant has not provided sufficient and/or convincing evidence to establish that a reserved parking spot would be made available in the timeline testified by the Tenant.

- [14] The Officer finds that during the tenancy, the Tenant was permitted to park in the parking lot, and when a reserved parking spot was made available in October 2023, the Representative provided it to the Tenant. The Officer concludes that there is no evidence to suggest the Representative breached the oral agreement based on this set of facts. Therefore, the Officer finds that the Tenant is entitled to a return of \$300.00 for the months paid for March, April and May 2024. The Application is allowed, in part.

Conclusion

- [15] The Application is allowed, in part.
- [16] The Landlord shall pay the Tenant \$300.00 forthwith.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall pay the Tenant \$300.00 forthwith.

DATED at Charlottetown, Prince Edward Island, this 6th day of March, 2024.

(sgd.) Cody Burke

Cody Burke
Residential Tenancy Officer

NOTICE

Right to Appeal

This Order can be appealed to the Island Regulatory and Appeals Commission (the “Commission”) by serving a Notice of Appeal with the Commission and every party to this Order within **20 days of this Order**. If a document is sent electronically after 5:00 p.m., it is considered received the next day that is not a holiday. If a document is sent by mail, it is considered served on the third day after mailing.

Filing with the Court

If no appeal has been made within the noted timelines, this Order can be filed with the Supreme Court of Prince Edward Island and enforced as if it were an order of the Court.