



Civil Resolution Tribunal

Date Issued: October 2, 2019

File: SC-2019-002895

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kirkham v. Ali*, 2019 BCCRT 1153

B E T W E E N :

BRAD KIRKHAM

APPLICANT

A N D :

SHAMEINE ALI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The respondent, Shameine Ali, rented a parking stall to the applicant, Brad Kirkham, beginning on April 1, 2018. The parties agreed to a 6-month term. At the time, they both lived in the same condominium complex. The respondent sold her condominium before the end of the term but the applicant continued to use the parking stall. The person who bought the respondent's condominium (purchaser)

had the applicant's girlfriend's car towed and complained to the strata corporation, which fined the applicant. The purchaser is not a party to this dispute. The applicant claims \$1,600 in strata fines and \$216.06 in towing fees.

2. The respondent rented another parking stall in the same parkade for the applicant but he refused to park there. She says that the fines and towing charges were his own fault.
3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - a. order a party to do or stop doing something;

- b. order a party to pay money;
- c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

- 8. The issues in this dispute are:
 - a. Was the applicant entitled to park in the parking stall after the respondent sold her condominium?
 - b. How much, if anything, should the respondent pay the applicant?

EVIDENCE AND ANALYSIS

- 9. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. I have read all the parties' evidence and submissions but I will only refer to what is necessary to explain and give context to my decision.
- 10. The parties agree about most of the facts in this dispute. Unless otherwise noted, the facts are undisputed.
- 11. The parties each owned a condominium in the same residential strata development, which had an underground parkade. In March 2018, the respondent advertised her parking stall for rent and the applicant inquired. The respondent wanted to rent out the parking stall month-to-month in case she needed the parking stall. However, the applicant was adamant that he needed it until the end of September 2018. The parties agreed to a 6-month term, from April 1 to September 30, 2018, at \$100 per month, for a total of \$600.
- 12. The applicant had his own parking stall in the strata's parkade, where he parked his truck. He says that he needed a second, larger parking stall that could fit his motorcycle and a car or truck for when he had guests. The respondent's parking stall was next to a small alcove where the applicant could put his motorcycle. The

applicant says that he needed it to be guaranteed until the end of September because that is when he planned to put his motorcycle back in storage for the winter.

13. On July 19, 2018, the respondent texted the applicant that she had sold her condominium with a closing date of August 2, 2018. The respondent rented another parking stall in the same parkade for the applicant to use for August and September 2018 (replacement stall), at her own expense. The replacement stall was on a lower level of the parkade. On July 23, 2018, the applicant agreed to look at the replacement stall to see if it would suit his needs.
14. On August 1, 2018, the applicant told the respondent that the replacement stall was not suitable. The applicant said that their contract was until the end of September. He said that the contract remained binding.
15. The respondent replied that if there was a vehicle parked in the parking stall when the condominium sale closed, it would be towed. She told him that the purchaser would have the right to use the parking stall and that she would not be held responsible if a vehicle was towed.
16. The applicant responded that his rental of the parking stall was “tied to” the property. He said that the purchaser was required to assume the lease.
17. Despite the respondent’s warnings, the applicant continued to use the parking stall. On August 15, 2018, the applicant’s girlfriend’s car was towed. The applicant picked up the car on August 20, 2018, at a cost of \$216.16.
18. In September 2018, the applicant and his friend went on a trip, leaving his friend’s truck parked in the parking stall. The applicant left a note on the windshield of his friend’s truck informing the purchaser about the agreement with the respondent. The purchaser contacted the strata corporation to demand that it enforce the parking bylaw.

19. When the applicant returned from the trip, he found letters in his mailbox from his strata fining him a total of \$1,600. The applicant tried to have the fines reversed, but the strata corporation refused.

Was the applicant entitled to park in the parking stall after the respondent sold her condominium?

20. At the heart of the applicant's actions in 2018, and his arguments in this dispute, is his belief that he continued to have a right to use the parking stall after the respondent sold her condominium.
21. The applicant argues that the respondent should have disclosed their agreement to the purchaser as part of the sale process. The applicant blames the respondent for failing to inform the purchaser that he had the right to use the parking stall until September 30, 2018. The applicant argues that the purchaser had to assume the rental contract as part of her purchase of the condominium and that she was bound by the contract's terms.
22. In general, the legal doctrine called "privity of contract" means that a contract cannot give rights or impose obligations on persons who are not parties to the contract.
23. Based on the language he uses in his arguments, the applicant's belief that the purchaser was required to honour the rental agreement seems to have come from the *Residential Tenancy Act*, which creates some exceptions to privity of contract when dealing with the rental of residential properties. I find that these provisions do not apply to the rental of a parking stall.
24. I find that the doctrine of privity of contract applies. I find that the purchaser was not bound by the parties' contract just because she bought the condominium. In other words, the purchaser had no legal obligation to honour the applicant's contract with the respondent by allowing him to continue parking in the parking stall. I find that the purchaser had the right to use the rental stall as of August 2, 2018. The applicant lost his right to park there.

25. Because the respondent took away the applicant's right to use the rental stall before September 30, 2018, she breached the parties' contract. I will then turn to what, if anything, comes from her breach.

If so, how much, if anything, should the respondent pay the applicant?

26. The applicant argues that he should be reimbursed for the towing cost and the fines because he paid for the right to park in the parking stall until September 30, 2018. In effect, the applicant believes that the respondent is responsible for any costs he incurred by continuing to park there.
27. If a party breaches a contract, which the respondent did by terminating the parties' contract early, the other party is entitled to reasonable damages. In general, the way to measure damages for a breach of contract is that the applicant is entitled to the amount of money it would take to put him in the same position as if the contract had been performed. The applicant argues that the towing charges and fines represent the amount of money he had to spend to receive the benefit of the entire term of the contract.
28. However, the law places limits on the amount that the applicant can receive as damages. One limit is that the applicant has a duty to mitigate his damages. This means that the applicant needed to act reasonably to prevent avoidable expenses or costs after the respondent breached the contract.
29. While the respondent does not use the language of mitigation, the issue of mitigation is the core of her argument. The respondent says that the applicant should have parked in the replacement stall, which she rented specifically for him after she realized that he would lose the right to parking in her parking stall. Much of the parties' evidence focused on whether the applicant could have parked in the replacement stall.

30. The applicant says that the replacement stall was between 2 pillars and would not fit his friend's truck. He also says that his motorcycle would not fit behind the truck in the replacement stall, which did not have an alcove.
31. The applicant says that his friend's truck was 9 feet wide while the replacement stall was only 8 feet and 8 inches wide. However, the applicant's photographs show that he measured the width of the vehicle from the edges of each sideview mirror. I find that including the sideview mirrors does not accurately measure whether the truck could fit into the replacement stall because the sideview mirrors can be easily collapsed to the side of the truck.
32. The applicant also says that his friend's truck, which appears to have a raised suspension, is just under 81 inches high. The entry gate to the parkade says that the minimum clearance is 80 inches. The applicant therefore says that he did not attempt to park his friend's truck in the replacement stall because it would have risked damage to the truck and the parkade. He says that the clearance on the parkade level with the replacement stall was lower than on the parkade level with the respondent's parking stall.
33. The respondent says that the parking stalls were essentially the same size and that the applicant should have used the replacement stall. She says that the purchaser successfully parked her truck there. However, she does not address the specific measurements of the applicant's friend's truck, which I find is an important detail.
34. I accept the applicant's evidence that his friend's truck was taller than the minimum clearance in the parkade. I agree that it would have been unreasonably risky to try to park that truck in the replacement stall.
35. However, the applicant does not adequately explain why he could not park his personal truck on that level and have his friend park in his own parking stall. In his submissions, he admits that he could have parked there but it would have been difficult and inconvenient because of the pillars. However, I find that his evidence

about the effect of the pillars on his ability to park his truck in the replacement stall is speculative because there is no evidence that he tried to park there.

36. Furthermore, the applicant does not explain why his girlfriend did not park in the replacement stall. According to the towing bill, the applicant's girlfriend's car was a Toyota Camry, which presumably would have fit easily into the replacement stall. Therefore, the size and location of the replacement stall do not explain why the applicant had his girlfriend park in the respondent's parking stall after August 2, 2018.
37. For these reasons, I find that the applicant failed to mitigate his damages by refusing to park either his girlfriend's car or his personal vehicle in the replacement stall. In other words, I find that the towing cost and fines were avoidable losses, which the respondent is not responsible for.
38. As for the applicant's motorcycle, he continued to park it in the alcove until he put it back into storage. Furthermore, as the respondent points out, the alcove was not technically part of her parking stall. The strata could have forced him to stop using it at any point, although it decided not to do so. In any event, he incurred no additional expenses or losses because of the respondent's breach of contract with respect to the motorcycle.
39. For these reasons, even though the respondent breached the contract, I find that the applicant is not entitled to be reimbursed for the towing costs or the fines. I dismiss the applicant's claims.
40. Under section 49 of the CRTA, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The applicant has not been successful so I dismiss his claim for reimbursement of tribunal fees and dispute-related expenses. The respondent did not claim any dispute-related expenses.

ORDER

41. I order that the applicant's claims, and this dispute, are dismissed.

Eric Regehr, Tribunal Member