

**REASONS FOR DECISION OF THE
ADMINISTRATIVE PENALTY TRIBUNAL**

Form 10

Date of Hearing: Tuesday, August 24, 2021

Hearing Officer: N. Bronfman

Re:PC808107

City's Representative:

Owner's Representative: Thomas Foulds

INTRODUCTION

EXTENUATING CIRCUMSTANCES - a special or specified circumstance, including such types of extenuating circumstances established by the City Solicitor that partially or fully exempts a person from performance of a legal obligation so as to avoid an unreasonable or disproportionate burden or obstacle.

FINANCIAL HARDSHIP - a significant difficulty or expense and focuses on the resources and circumstances of the person owing an administrative penalty, including administrative fees, in relationship to the cost or difficulty of paying the administrative penalty or any administrative fees.

SCREENING OFFICER'S DECISION

The Administrative Penalty and all associated fees are AFFIRMED

CITY REPRESENTATIVE'S EVIDENCE

3 photographs showing the vehicle parked in contravention to the bylaw

RECIPIENT'S EVIDENCE

Factum
1 photograph

CITY REPRESENTATIVE'S SUBMISSIONS

RECIPIENT'S SUBMISSIONS

Permit was renewed on 19 JUL 20

The permit was not affixed to the windshield as he wanted to have it laminated, so as to be able to move it between cars as necessary.

There is no necessity to have the permit displayed, and that just having it in his possession was enough to satisfy the bylaw written on the parking violation tag. Bylaw 925-5 N(1) does not reference 'display'.

DECISION

Upon reviewing the evidence of the enforcement officer, the screening officer's decision and the written, photographic and oral evidence of the appellant, I have made the decision to affirm this Penalty.

The photographic evidence from the enforcement officer shows the windshield of the tagged vehicle without a valid parking permit. In EPS photo evidence #2 a blue expired permit is visible in the lower portion of the driver's side windshield. (expired May 31, 2020). There is no purple permit the validity of which is June 1, 2020 to November 30, 2020 visible anywhere on the windshield. In fact in his testimony Mr. Foulds acknowledged that there was no valid permit displayed on his windshield at the time of the violation.

Chapter 925-5 N requires that a valid permit "...shall be clearly displayed in the windshield of the vehicle." The evidence that there was no such valid permit displayed is uncontroverted and accordingly Mr. Foulds' appeal of the Screening Decision must fail.

Mr. Foulds, in his oral argument advanced an alternative ground for his Appeal. He suggested that it was not necessary to have the permit displayed, and that merely having it in his possession was enough to satisfy the bylaw.

As indicated above, it is my view that displaying the valid permit is necessary to meet the requirements of the regulation. Indeed enforcement of this important aspect of parking regulation would be virtually impossible if that were so.

But even if Mr. Foulds' alternate grounds were to be correct, he failed to provide convincing evidence that he did in fact have a valid permit at the time of the violation. He failed at both the Screening review and at the appeal Hearing to provide any corroboration for his contention that he had purchased the permit prior to the violation. It would have been an easy thing to do. A transaction record or a receipt from the City demonstrating the timely purchase of the permit would at least have given a measure of credibility to his alternate ground. But this he did not do, relying solely on his bald assertion.

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Date Issued:

That assertion was made at the screening stage and in the hearing of his appeal. He stated that he had purchased the permit on July 20, 2020. That assertion was not accepted by the Screening Officer, nor by me in the absence of accessible corroboration. Our governing legislation makes it clear that the onus of persuasion lies with the Owner. That onus was not met by Mr. Foulds in this case.

In my view even if he had been able to convince me that he had a valid permit at the time of the violation his appeal would have failed because no valid permit was displayed on the windshield, a fact proven by the Enforcement Officer's evidence, and acknowledged by Mr. Foulds himself.

Whether what Mr Foulds proposes to do with his Film-Auto Permit, that of switching between vehicles, is in conformity with the rules governing the permit is beyond the scope of this Tribunal.

Whenever the purchase date was, the main issue in this hearing is that on the date of the offence September 1, 2020, the permit was not displayed in the vehicle as required in order to be valid.

Based on these reasons, the Penalty is Affirmed.

 N. Bronfman

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Hearing Officer

Date Signed: 22/09/2021

Attachments: