

REASONS FOR DECISION OF THE
ADMINISTRATIVE PENALTY TRIBUNAL

Form 10

Date of Hearing: Monday, October 18, 2021

Hearing Officer: Larry Swartz

Re: PD170031

City's Representative: None

Owner: Fields, Debra G

INTRODUCTION

On 15-Nov-20, at 12:25 PM, at a location opposite 93 Soudan Ave in the City of Toronto, Parking Violation Notice (PVN) PD170031 was issued to plate number CHLJ111 citing that the vehicle was parked in excess of the permitted time, contrary to Toronto Municipal Code, Chapter 950-405F(1).

The Owner appeared at the hearing on her own behalf.

The penalty levied in the first instance was in the amount of \$40.00.

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 Screening Officer, in their decision dated, upheld the ticket, and left the original penalty at \$40.00. The Screening officer noted the following:

“A lack of available parking is not a valid defence. The vehicle was parking in excess of the permitted time as per clearly posted signage.”

CITY REPRESENTATIVE'S EVIDENCE

No City Representative appeared in the case. Pursuant to the Toronto Municipal Code, Chapter 610, sections 1.2 and 2.3, the PVN is a certified statement of the parking enforcement officer, thereby being evidence of the facts stated therein, in the absence of evidence to the contrary. As such, the PVN evidenced a contravention by the Owner's vehicle of the Toronto Municipal Code, Chapter 950-405F(1). The enforcement Officer submitted a series of photographs, taken at the time the PVN was issued.

RECIPIENT'S EVIDENCE

The Owner filed photographs and a written statement. The Owner also gave oral evidence.

CITY REPRESENTATIVE'S SUBMISSIONS

There was no City Representative in attendance at the hearing.

RECIPIENT'S SUBMISSIONS

The Owner provided oral evidence and a written statement that included a reference to the construction and the difficulties of parking in that location. The oral testimony supported the written statement that included the following:

“I have been very aware of the restrictions and constraint of the parking situation in this location for many years”

and

“Considering the circumstances; the city and Parking Enforcement has not made any acknowledgement or reasonable allowance to the incurred difficulties and struggles for fair parking arrangement during construction times.

“I feel the infractions given are very unforgiving and greedy.”

The owner also claimed that the parking restrictions had changed in recent years and that the signage was unclear or defaced.

REASONS FOR DECISION

The Tribunal's jurisdiction is governed by Chapter 610 of the Toronto Municipal Code, Chapter 610. Pursuant to sections 1.2 and 2.3, the PVN constitutes a certified statement of the parking enforcement officer, thereby being evidence of the facts as stated therein, in the absence of evidence to the contrary. The presumption that a violation occurred can be displaced, but only where the Owner is able to convince the Hearing Officer that on a balance of probabilities the offense did not occur. The governing legislation also stipulates the Decision of a Hearing Officer is final.

The Hearing Officer considered the applicable legislation, the documentary evidence of the Parking Enforcement Officer, the decision of the Screening Officer, and the evidence of the Representative. The Hearing Officer determined that the Representative's evidence failed to meet the burden of persuasion.

Specifically, the Owner did not provide clear and convincing evidence that the PVN should not have been issued to her. But the Owner did acknowledge and admit that she parked at the location cited in the ticket. The Owner exceeded the one-hour limit for parking at the location.

The Hearing Officer did agree with the reasons of the Screening Officer. There was no good reason to cancel the ticket given the evidence of the Parking Enforcement Officer. The Owner knows the location and multiple signs limit the time for parking at that location. The Hearing Officer did consider the amount of the penalty.

The Owner raised the issue that she felt the sign was defaced. The Hearing Officer noted that the city had put a small strip of permanent white industrial tape on the sign. The tape covered up the previously weekdays (Monday to Friday), thereby extending the one-hour parking time limit to all days of the week. This did not deface the sign. The Owner argued that the sign was not acceptable. However, signs with white industrial tape applied by the city are common throughout the city. The Hearing Officer found that the sign was acceptable.

The corner of the industrial tape on the sign closest to where the Owner parked was coming off. But the sign was clear, and the other signs on the street were also clear. The Owner could have looked at the other signs on the street and would have seen that they provided the same parking restriction.

The Parking Enforcement Officer's photograph was of one of the relevant signs. It did not need to be a photo of the exact sign nearest the Owner's vehicle, as the Owner had argued.

The Owner claimed to be a regular visitor at the location and said that the signs used to allow parking for more than one hour on the weekend but had changed.

Date Issued: January 14, 2022

The Hearing Officer examined the history of the signs. The current signs had been in place for more than five years. A person familiar with the location, such as the Owner, would have had sufficient time to adjust to the change.

At this location, according to the Owner's own evidence, parking is scarce, particularly given recent construction. However, public policy did not support extending the parking time to the Owner beyond that allowed.

Where parking is scarce it is reasonable to expect the city to erect signs limiting the parking time so more people can access the location. It is important that drivers show consideration for others by sharing access and respecting the time limits where parking is scarce. The Owner's extended time of parking denied access to others who may have wanted to park at the same location.

Other options exist besides street parking for drivers in the area who need to park for longer periods than allowed on the street. The area has paid parking, including a nearby reasonably priced Green P municipal parking lot, which is easy to access on a Sunday, the day of the offense.

After considering the applicable legislation, the Screening Officer's Decision, the evidence, and the Representative's submissions, the Hearing Officer decided to reduce the amount of the penalty.

DECISION

In the result, the Hearing Officer decided to reduce the penalty from \$40.00 to \$30.00

Larry Swartz
Hearing Officer

Date Signed: January 14, 2022