



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

MNDC, OLC, FF, O

### **Introduction**

This matter was convened to the Tenant's application for a Monetary Order for compensation for damage or loss; an Order that the Landlord comply with the Act; a determination with respect to whether or not the Tenant is entitled to park her car at the rental unit free of charge; and to recover the cost of the filing fee from the Landlord.

The Tenant gave affirmed testimony.

The Tenant testified that she mailed the Notice of Hearing documents to the Landlord, by registered mail, on March 26, 2010. The Tenant provided a copy of the registered mail receipt and tracking number in evidence. The Tenant testified that she mailed her evidence package to the Landlord, via registered mail, on April 8, 2010.

Based on the affirmed testimony and documentary evidence provided by the Tenant, I am satisfied that the Landlord was served with the Notice of Hearing documents pursuant to the provisions of Section 89(1)(c) of the Act. Despite being served with the documents, the Landlord did not sign into the Hearing, and the matter proceeded in its absence.

I am also satisfied that the Tenant served the Landlord with copies of the documentary evidence in support of her claim.

### **Issues to be Decided**

- Is the Tenant entitled to a Monetary Order pursuant to the provisions of Section 67 of the Act?

- Is the Tenant entitled to park at the rental property free of charge?
- Should the Tenant be compelled to provide certified cheques for rent payments?

### **Background and Evidence**

The Tenant gave the following testimony and documentary evidence:

The tenancy began on December 1, 1988. The Tenant provided a copy of the tenancy agreement in evidence. The Tenant testified that at the time the tenancy agreement was entered into, she had a different last name. The Tenant provided a copy of a Certificate of Change of Name effective May 30, 1990, and signed and sealed by the Division of Vital Statistics, Ministry of Health, on June 4, 1990, in evidence.

The Tenant testified that the Landlord insisted that parking was not included in her tenancy agreement. The Tenant testified that parking was included, and for no cost to the Tenant.

The Tenant stated that the Landlord advised the Tenant that the Landlord did not receive her cheque for November, 2009, rent. The Tenant stated that she had provided a cheque for November's rent, but put a stop-payment on it and issued another cheque for November rent.

The Tenant testified that she provided the Landlord with a rent cheque for December's rent, but the Landlord attempted to cash her original November rent cheque (the one the Landlord had advised was not received) for December's rent, and that it was returned to the Landlord. The Landlord charged her a bank service fee of \$7.50 for the returned cheque, which the Tenant paid.

The Landlord wrote to the Tenant on March 7, 2010, demanding that future rent be paid by way of bank draft or certified cheque only. The Landlord also informed the tenant

that she would be charged late charges and NSF fees in the total amount of \$42.50, which the Tenant paid under protest.

The Tenant stated that it was the Landlord's error in trying to cash the November rent cheque, and that she didn't feel it was right that she should have to provide certified cheques because of an error the Landlord made. She stated that she has been paying the Landlord rent by personal cheque for 21 years and has never had a cheque returned for insufficient funds. The Tenant testified that she paid rent on time, by personal cheque, for April, 2010, but the Landlord refused to accept it and insisted she pay by certified cheque. The Landlord also charged her \$25.00 in "late fees" for April's rent, which the Tenant paid under protest. The Tenant seeks compensation in the amount of \$67.50, to recover the late fees and bank fees. The Tenant provided copies of bank statements and the November cheque in support of her claim.

The Tenant testified that she was provided parking stall #19 by the previous manager, and that parking was included in her rent pursuant to the tenancy agreement signed November 2, 1988. The Landlord has a new manager, who insisted that she was not entitled to a free parking spot and stated that she did not have a written tenancy agreement. The Tenant stated that she provided the Landlord with a copy of her tenancy agreement, but the Landlord still claims she has no right to park for free at the rental property. The Landlord told her that she could park, but would have to pay \$80.00 a month in addition to her monthly rent.

### **Analysis**

Based on the undisputed testimony and documentary evidence of the Tenant, I am satisfied that the Landlord attempted to cash the cancelled November rent cheque for December's rent and that it was the Landlord's error. Therefore, I find that the Tenant is entitled to recover the \$42.50 she paid to the Landlord in bank fees and late fees.

Likewise, I find that there is no just cause for the Tenant to have to pay her rent by way of certified cheque, and award the Tenant \$25.00 in recovery of the late fees she was charged for April, 2010 rent. The Tenant may continue to pay her rent by personal cheque.

The tenancy agreement provides parking for the Tenant, which is included in her monthly rent payment. I hereby order the Landlord to provide the Tenant a parking spot at no additional charge to the Tenant.

The Tenant has been successful in her application and is entitled to recover the filing fee in the amount of \$50.00 from the Landlord.

Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct her monetary award of \$117.50 from future rent due to the Landlord.

### **Conclusion**

I order the Landlord to provide the Tenant with a parking spot, without additional cost to the Tenant, in accordance with the terms of the tenancy agreement.

The Tenant may provide the Landlord with personal cheques for rent payments.

The Tenant may deduct the amount of \$117.50 from future rent due to the Landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 17, 2010.

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Dispute Resolution Officer