



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

CNR, DRI, FF, O

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent; to dispute an additional rent increase; to recover the fee for filing an Application for Dispute Resolution, and for "other".

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make submissions to me.

The female Tenant stated that on July 07, 2014 the Application for Dispute Resolution and the Notice of Hearing were personally delivered to the Landlord's business office. The Agent for the Landlord acknowledged receipt of these documents, although he does not know how they were delivered.

On July 14, 2014 the Landlord submitted numerous documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that he does not know if these documents were served to the Tenant. The male Tenant stated that these documents were not received. As the Landlord has been unable to establish that these documents were served to the Tenant and the Tenant denies receipt of the documents, they were not accepted as evidence for these proceedings.

On July 21, 2014 the Tenant submitted numerous documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The male Tenant stated that these documents were personally delivered to the Landlord's business office. The Landlord stated that he does not know if these documents were delivered to the Landlord's business office, as he was not working for the Landlord on July 21, 2014. He stated that he does not have the documents in his possession.

On the basis of the male Tenant's testimony and in the absence of evidence that refutes it, I find that the Tenant delivered a package of evidence to the Landlord on July 21, 2014 and it was therefore accepted as evidence for these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, be set aside and has the rent been increased in accordance with the *Act*?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on November 01, 2012. The parties agree that when the tenancy began the Tenant agreed to pay monthly rent of \$995.00 by the first day of each month.

The Landlord and the Tenant agree that in September of 2013 the Landlord provided the Tenant with written notice of their intent to increase the rent to \$1,016.00, effective January 01, 2014. The Tenant is not disputing this rent increase.

The male Tenant stated that the cost of parking has always been included in the rent and that they have had an assigned parking stall since the beginning of the tenancy.

The Advocate for the Tenant stated that the Tenant has had the use of a parking stall since this tenancy began. He stated that he was the building manager when the tenancy began and there was an understanding that the parking stall was included with the rent.

The Agent for the Landlord stated that the Respondent became the Landlord on August 28, 2013 so he does not know if the Tenant had a parking stall since the start of the tenancy. He does not dispute that the Advocate for the Tenant was a former building manager.

The Agent for the Landlord stated that the written tenancy agreement indicates that rent is \$995.00; that the space for indicating parking fees has a dash through it; and that the total rent and fees due is \$995.00. He stated that on March 21, 2014 the Landlord provided the Tenant with written notice of the Landlord's intent to charge \$20.00 per month for parking, effective May 01, 2014, however the Tenant did not agree to this fee.

The Tenant does not have a copy of this agreement so they cannot confirm or deny this statement. The Advocate for the Tenant stated that it is likely true, because no extra fees for parking were charged.

The Agent for the Landlord stated that the Landlord charged total parking fees of \$60.00 for May, June, and July of 2014. He stated that the Tenant had a credit of \$25.00 on

their account, which the Landlord applied to these fees. He stated that the Tenant currently owes \$35.00 for parking.

The Landlord and the Tenant agree that the Tenant did not pay rent when it was due on July 01, 2014 but that they did pay \$1,016.00 in rent on July 03, 2014.

The Landlord and the Tenant agree that July 02, 2014 the Landlord posted a Ten Day Notice to End Tenancy on the door of the rental unit, which declared that the Tenant owed rent of \$1,051.00. The Landlord stated that \$1,016.00 of this amount was rent and \$35.00 was for the unpaid parking fees.

The Tenant has applied to recover lost wages arising from this dispute.

### Analysis

On the basis of the undisputed evidence, I find that the rent was increased to \$1,016.00 on January 01, 2014.

On the basis of the testimony of the male Tenant and the Advocate for the Tenant, I find that the Tenant has had a private parking still since the beginning of this tenancy, for which they did not pay any additional fee. I therefore find that this is a service that was included in the monthly rent.

In determining this service was included in the rent I was heavily influenced by the description of the tenancy agreement provided by the Agent for the Landlord, who stated the written tenancy agreement indicates that rent is \$995.00; that the space for indicating parking fees has a dash through it; and that the total rent and fees due is \$995.00. Given that the tenancy agreement has not outlined a fee for parking and parking has been provided, I find it was a service/facility that was provided with the tenancy.

As parking is provided with the tenancy, I find that the Landlord does not have the right to charge a fee for this service/facility and that any attempt to do so constitutes a rent increase. Section 42 of the *Act* a landlord may only increase the rent every twelve months. As the Landlord already increased the rent on January 01, 2014, I find that the Landlord does not have the right to increase the rent again in 2014.

As the Landlord does not have the right to increase the rent again in 2014, I find that the Landlord does not have authority to collect the \$20.00 parking fee they have been attempting to collect since May 01, 2014. As the Landlord applied the Tenant's credit of \$25.00 to parking fees, I find that the Tenant has the right to reduce one monthly rent payment by this amount, pursuant to section 43(5) of the *Act*.

On the basis of the undisputed evidence, I find that the Tenant did not pay \$1,016.00 in rent that was due on July 01, 2014. I therefore find that the Landlord had the right to serve the Ten Day Notice to End Tenancy that was posted on the door of the rental unit on July 02, 2014.

On the basis of the undisputed evidence, I find that rent of \$1,016.00 was paid on July 03, 2014. I find that this payment rendered the Ten Day Notice to End Tenancy ineffective, pursuant to section 46(4)(a) of the *Act*. I therefore grant the Tenant's application to set aside the Notice to End Tenancy.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Tenant's claim to recover lost wages.

I find that the Application for Dispute Resolution has merit and that the Tenant is therefore entitled to recover the fee for filing this Application.

### Conclusion

As I have determined that the Landlord does not have grounds to end this tenancy pursuant to section 46 of the *Act*, this tenancy will continue until it is ended in accordance with the *Act*.

I hereby authorize the Tenant to deduct \$50.00 from one rent payment as compensation for the fee paid to file this Application for Dispute Resolution.

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: September 08, 2014

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Residential Tenancy Branch

