



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Siddoo Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNDC, DRI, OLC, O

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution in which the Tenant applied to dispute an additional rent increase, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, for a monetary order for money owed or compensation for damage or loss, and for "other".

The Tenant stated that on December 12, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were mailed to the Landlord. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Issue(s) to be Decided

Has there been a rent increase that does not comply with the *Act* and is the Tenant entitled to a rent refund as a result of that increase?

Does the Landlord have the right to charge rent for parking?

### Background and Evidence

The Tenant stated that she moved into this rental unit in 1977 and that the Respondent became her landlord approximately 12-15 years ago. The Agent for the Landlord stated that the Respondent became the landlord approximately 15 years ago, at which time the Tenant was occupying the rental unit.

The Tenant stated that she signed a tenancy agreement in 1977 but she could not locate a copy of that agreement. The Agent for the Landlord stated that the Landlord has never been provided a copy of that agreement.

The Tenant stated that parking has been included in her rent since the start of her tenancy and that she has always had the right to park one vehicle on the residential property. She stated that her written tenancy agreement specifies that parking is included in the rent.

The Agent for the Landlord stated that he does not know if the written tenancy agreement specifies that parking is included in the rent, as he has not seen the agreement. He stated that all the other occupants of the residential complex pay for parking separately from their rent and he believes this Tenant should also pay for parking separately. He stated that the Landlord would reduce her rent by \$25.00 if the Tenant wished to give up her right to park on the residential property.

The Tenant submitted a copy of a Notice of Rent Increase from 1983, which indicates that parking is included in the rent. The Agent for the Landlord acknowledged that parking was included in the rent in 1983 but argued that the Tenant may have given up that right in subsequent years. The Tenant stated that she has not given up that right.

The Landlord and the Tenant agree that the Tenant was given a Notice of Rent Increase in which the Tenant was advised her rent was increasing from \$1,010.00 to \$1,035.00 per month, effective November 01, 2011. This is an increase of \$25.00, which is 2.47%. The parties agree that the Tenant has paid the imposed rent increase.

The Landlord and the Tenant agree that the Tenant was given a Notice of Rent Increase in which the Tenant was advised her rent was increasing from \$1,035.00 to \$1,080.00 per month, effective December 01, 2012. This is an increase of \$45.00, which is 4.34%. The parties agree that the Tenant has paid the imposed rent increase.

The Landlord and the Tenant agree that the Tenant was given a Notice of Rent Increase in which the Tenant was advised her rent was increasing from \$1,080.00 to \$1,155.00 per month, effective December 01, 2013. This is an increase of \$75.00, which is 6.94%. The parties agree that the Tenant has paid the imposed rent increase.

The Landlord and the Tenant agree that the Tenant was given a Notice of Rent Increase in which the Tenant was advised her rent was increasing from \$1,130.00 to \$1,175.00 per month. The Notice indicates that rent is being charged separately, at a cost of \$25.00 per month, and that the Tenant must pay total rent and parking of \$1,200.00, effective December 01, 2014. The parties agree that the Tenant has paid the imposed rent increase.

The Tenant is seeking a rent refund for any overpayments she has made.

## Analysis

I find that parking has been included in the rent since the start of the testimony and that it remains a service that is included in the rent. This conclusion was based on the testimony of the Tenant and the Notice of Rent Increase from 1983 which corroborates this testimony. In reaching this decision I note that the Landlord has produced no evidence to show that parking was not included in the original tenancy agreement or that either the Tenant or the Landlord has amended the tenancy agreement to remove this service.

Section 27 of the *Residential Tenancy Act (Act)* authorizes a landlord to terminate or restrict a service or facility which, in some circumstances, may include parking. A landlord must provide 30 days written notice of the termination or restriction, in the approved form, and the landlord must reduce the rent by an amount that is equivalent to the reduction in the value of the tenancy agreement. In the absence of evidence to show that the Landlord has provided the Tenant with written notice of the termination or restriction of her parking rights on the approved form, I cannot conclude that the Landlord has amended the tenancy agreement in regards to parking.

Section 41 of the *Act* stipulates that a landlord may not increase the rent except in accordance with the *Act*. Sections 42 and 43 of the *Act* stipulate that a landlord may increase the rent each year by an amount calculated in accordance with the Residential Tenancy Regulation.

In 2011 the maximum rent increase was 2.3%. As the rent was increased from \$1,010.00 to \$1,035.00 in November of 2011, which is 2.47%, I find that the rent increase exceeds the amount authorized by the *Act*. As the rent was not increased in accordance with the *Act* in 2011, I find that the rent remained at \$1,010.00 in 2011 and that the Landlord did not have the right to collect the rent increase that was imposed in 2011.

In 2012 the maximum rent increase was 4.3%. As the rent was increased from \$1,010.00 (the actual rent in 2011) to \$1,080.00 in December of 2012, I find that the rent increase imposed in 2012 far exceeds the amount authorized by the *Act*. As the rent was not increased in accordance with the *Act* in 2012, I find that the rent remained at \$1,010.00 in 2012 and that the Landlord did not have the right to collect the rent increase that was imposed in 2012.

In 2013 the maximum rent increase was 3.8%. As the rent was increased from \$1,010.00 (the actual rent in 2011) to \$1,155.00 in December of 2013, I find that the rent increase imposed in 2013 far exceeds the amount authorized by the *Act*. As the rent was not increased in accordance with the *Act* in 2013, I find that the rent remained at \$1,010.00 in 2013 and that the Landlord did not have the right to collect the rent increase that was imposed in 2013.

In 2014 the maximum rent increase was 2.2%. As the rent was increased from \$1,010.00 (the actual rent in 2011) to \$1,200.00 in December of 2014, I find that the rent increase imposed in 2014 far exceeds the amount authorized by the *Act*. As the rent was not increased in accordance with the *Act* in 2014, I find that the rent remained at \$1,010.00 in 2014 and that the Landlord did not have the right to collect the rent increase that was imposed in 2014.

I find that the Tenant has overpaid her rent in the following amounts:

Rental Period	Amount Due	Amount Paid	Overpayment
Nov & Dec 2011	\$2,020.00	\$2,070.00	\$50.00
2012	\$12,120.00	11 mos. @ 1,035 = 11,385	
		1 mo. @ 1,080 = 1,080	\$345.00
2013	\$12,120.00	11 mos. @ 1,080 = 11,880	
		1 mo. @ 1,155 = 1,155	\$915.00
2014	\$12,120.00	11 mos. @ 1,155 = 12,705	
		1 mo. @ 1,200 = 1,200	\$1,785.00
January, 2015	\$1,010.00	\$1,200.00	\$190.00
Total	\$39,390.00	\$42,675.00	\$3,285.00

Section 43(5) of the *Act* stipulates that if a landlord collects an unauthorized rent increase the tenant may deduct the increase from the rent. I therefore find that the Tenant has the right to reduce her rent by \$3,285.00.

### Conclusion

Based on these determinations, I authorize the Tenant to reduce one monthly rent payment by \$1,010.00; reduce a second monthly rent payment by \$1,010.00; reduce a third monthly rent payment by \$1,010.00; and reduce one monthly rent payment by \$255.00.

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: January 14, 2015

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Residential Tenancy Branch

