



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capital Regional Housing  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      MNDC, RR, FF, O

### Introduction

This hearing dealt with an application by the tenant for a monetary order including reimbursement from the landlord of the filing fee paid by the tenant, and an order reducing the rent for repairs, services, or facilities agreed upon but not provided. Both parties appeared and had an opportunity to be heard.

### Issue(s) to be Decided

- Is the tenant entitled to a monetary order and, if so, in what amount?
- Should the rent be reduced and, if so, on what terms?

### Background and Evidence

This tenancy has existed for over 12 years. The monthly rent is currently \$1070.00.

The rental unit is a townhouse. According to the landlord there are 38 townhouses in the complex; according to the tenant her townhouse is one of 18 in a cluster within the complex. Each townhouse includes a single car garage or carport. The tenant says the most tenants can fit a second vehicle in front of their garage or carport but because of the location of her unit and the curve of the roadway in front of her unit she cannot without blocking the roadway. The landlord says that one parking spot is included in the tenancy agreement. If tenants want an additional parking spot they can rent one by paying an additional fee.

The tenant says there are six parking spots in the area that is subject to this dispute. Two are designated as visitor spots and have been for some time. They are actually marked as visitor spots. According to the tenant the paint on all parking spots is very faded and very difficult to read.

The tenant says that until recently the other four spots were usually empty so she and her neighbours have been using them as visitor parking. Last summer the caretaker told her that some of these spots will be rented out.

The landlord's witnesses testified that there are currently five visitor parking spaces on that side of the complex and that additional street parking is very close by. There used to be six visitor

spots but last year #27 was re-assigned to accommodate another tenant whose daughter uses an electric wheel chair.

The tenant responded that the parking spots are so poorly marked she does not know where the other three visitor spots are.

The landlord's witnesses say they do not know the last time the parking lot was painted and they have been waiting since October for the line painters. The tenant says she cannot recall the last time the parking lot was painted.

The tenant's son lives with her. On September 10, 2014, while she was at work, her son had a visitor. The visitor parked in #23, which is rented to another tenant. The other tenant called the emergency number which triggers a call to the towing company.

The towing company attended and the visitor's car was loaded onto a dolly. When the two young men realized what was happening they went out, paid the fee requested by the tow truck operator, and the car was taken off the dolly.

The visitor had to pay the towing company a total of \$97.47 comprised of a drop fee of \$79.00, fuel service charge of \$13.83, and GST of \$4.64.

Then on September 30 the landlord sent the tenant an invoice in the amount of \$50.00 for the "towing callout". The tenant says she received the invoice on October 9.

The tenant has not paid the fee. She wrote a letter of complaint to the landlord dated November 28. When she did not receive a response she filed this application for dispute resolution on January 9, 2015.

The landlord's witness says she only received the letter when it was attached to the tenant's application for dispute resolution, which is why there was no response.

The parties agree that there are two signs from the towing company posted in this part of the complex; one at the entrance and the other on the wall of a service building. The tenant's evidence is that the signs say "illegally parked vehicles" will be towed and that a fee of \$35.00 will be charged for an "on site drop".

The landlord agreed that the sign does say that the drop fee will be \$35.00 but it also says that there will be an additional fee if a dolly is used. She said she contacted the towing company and was told that a dolly had to be used because the visitor's vehicle was front wheel drive. The tenant did not agree that the sign mentioned any additional charges.

The landlord said that the \$50.00 "towing callout" charge is set out in the Tenant's Handbook. She also said she is prepared to reverse the charge.

The tenant says there is no clear signage that states that numbered spots are reserved for specific units.

She argues that the signs refer to vehicles that are illegally parked and that “visiting” is not an illegal activity.

Finally the tenant argues that “although not all spots were marked as visitor spots in this particular section of the parking lot, they have been used as such for years” and that a change in the number of visitor spots is “essentially a loss of service from my initial tenancy agreement”.

#### Analysis

On any application, including an application by a tenant that a landlord has reduced or denied a service without reducing the rent by an appropriate amount, the burden of proof is on the applicant.

One of the challenges in this case is the fact that the only evidence filed by the tenant was a copy of her letter of complaint and the two invoices, and the landlord filed no written evidence at all. The following material would have been very helpful to both parties' positions:

- A copy of the tenancy agreement to establish what services were included in the rent and what conditions, if any, were placed on the use of the rental property including the parking lot.
- A copy of the Tenant's Handbook, again to establish what conditions, if any, were placed on the use of the rental property.
- Photographs of the signs posted by the towing company to establish the exact wording of the notices.
- Photographs of the markings on the disputed parking spots to illustrate just how legible or illegible they were.
- A site plan to establish the number and location of visitor parking spots for this complex.

The use of the parking lot is not determined only by the signage in the parking lot but also by the tenancy agreement signed by the parties and the policies, rules and regulation of the landlord as communicated to the tenants. The tenant has not established that the tenancy agreement or any related tenancy documents do not specifically address the use of the parking lot, including the restriction of visitor parking to designated spots.

The lack of photographs makes it impossible to determine whether an ordinarily observant driver would have seen that some parking spots were marked “visitor” and others were not. Accordingly, it is impossible to conclude that the visitor was improperly loaded up by the towing company.

On the evidence before me it is impossible to determine whether guest parking is a service for facility provided in the tenancy agreement.

In the hearing the landlord indicated its' willingness to reverse the \$50.00 "towing callout" charge and I order them to do so. The landlord had not filed any evidence to establish their right to charge this fee.

As the landlord testified that painting the parking lot has already been planned no further order will be made.

In the hearing there was some discussion about the organic garbage collection but no evidence filed. No order is made on this topic. If it continues to be an issue for the tenant she may file a new application for dispute resolution.

As the tenant has only achieved partial success on this application no order for reimbursement of the filing fee will be made.

#### Conclusion

The landlord is ordered to reverse the "towing callout" fee. No other order is made for the reasons set out above.

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: April 08, 2015

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Residential Tenancy Branch

