



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      CNC LRE DRI MNDC O OLC FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order regarding a disputed additional rent increase pursuant to section 43;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's Application for Dispute Resolution and evidentiary materials. She also testified that she faxed to the Residential Tenancy Branch her own evidentiary materials. She testified that she served the materials to the tenant on Monday, July 11 by regular Canada Post mail. The landlord did not submit any evidence of service to the tenant and the tenant denied receiving the landlord's evidence package. Based on the lack of proof of service of the landlord's evidence for this hearing, I exclude the landlord's documentary evidence.

The tenant has vacated the rental unit and therefore withdrew his application to cancel the landlord's notice to end tenancy as well as his application regarding access to his rental unit. He pursued his application for a monetary order with respect to overpayments in a monthly parking fee to the landlord as well as a rental increase.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss?

- Is the tenant entitled to recover \$25.00 a month in additional rent paid?
- Is the tenant entitled to recover \$35.00 parking fee?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on September 1, 2014 with a rental amount of \$1100.00 payable on the first of each month. The tenancy agreement was submitted as evidence for this hearing. It indicated the tenancy was scheduled for a fixed term of 12 months with no provision to continue the tenancy as a fixed term at the end. The wording of the tenancy agreement was as follows,

*the tenancy ends and the tenant must move out of the residential unit...*

The main 6 pages of the tenancy agreement do not mention parking. An addendum to the tenancy agreement was submitted by the tenant. It stated that, "Parking in the back is paid parking and every car has an assigned spot. However, if you do not have a paid parking spot, occasionally, space permitted, you may load/unload for a maximum of 5 min". The tenant provided undisputed testimony that he paid \$35.00 per month over the course of 10 months as a parking fee. The landlord acknowledged receipt of \$35 per month for 10 months from the tenant towards parking. She testified that parking spots were not assigned but that she provided a parking lot for her residents. She provided unclear testimony in an attempt to describe the nature of the parking on the residential premises.

The tenant testified that he was told that he could park at the back of the residence. He testified that, after a brief period of time, as he parked in this spot regularly, he began to receive nasty notes from the neighbours requesting that he cease and desist from parking in that area as it was private property. He testified that the parking area belonged to neighbouring property owners including one portion of the lot which was owned by the city in which the premises were located. The tenant testified that the area within the parking lot closest to the residence was often full with no room to park his vehicle and that the landlord had told him he could park anywhere within the parking lot.

The tenant testified that, despite the original wording of the fixed term tenancy, the tenancy continued on a month to month basis. The landlord did not dispute that the tenant continued to pay rent for the entirety of his tenancy until he vacated the rental unit. The landlord also did not dispute that the tenant's monthly rental amount was increased by \$25.00 per month briefly after the end of the fixed term tenancy.

The tenant testified that, at the time his fixed term was scheduled for renewal, the landlord presented a new fixed term agreement. His undisputed sworn testimony was that this new agreement;

- that the agreement was for a further one year fixed term;
- was in a rental amount \$25.00 more than his previous tenancy agreement;
- that he chose not to sign the agreement after some thought;
- that the landlord stated she would not consider a month to month tenancy.

The landlord testified that she does not enter into month to month agreements but only provides the option of fixed term tenancy agreements to her tenants. She suggested that the tenant delayed the process of signing any new agreement and acknowledging her annual rent increase notice in order to frustrate the process.

The landlord testified that she provided the tenant with a notice of annual rental increase by posting it on the tenant's door in August 2015 and that the rental increase took effect in September 2015. The tenant denied receiving a formal notice of a rent increase from the landlord.

### Analysis

In some cases, issues related to parking raise a jurisdictional issue and are found to be outside of the purview of the Residential Tenancy Branch. In this particular case, parking is clearly referenced within the addendum to the tenancy agreement. Further, neither party disputed the nature and details of the parking agreement attendant to this tenancy. In this tenancy matter, the tenants signed a rental agreement with an addendum that clearly indicated that parking was provided. Both parties agreed that parking was to be provided to the tenant for a monthly fee of \$35.00 per month. Both parties agree that the tenant paid for parking to the landlord over 10 months of the tenancy. I find that in this case, this is a residential tenancy matter regarding a facility (ie parking) agreed to but not provided by a landlord as part of the tenancy agreement.

Section 27 of the *Act* provides that a landlord can terminate or restrict a service or facility that is not a material term of the residential tenancy agreement. If the landlord wishes to make such a change, the landlord must

- (a) give 30 days' written notice, in the approved form, of the termination or restriction, and
- (b) reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

The landlords are not precluded from making a change to non-material services or facilities available to a tenant. However, the landlords must comply with the *Act* by; providing the appropriate notice to the tenant and making steps to compensate for any loss of use of service or facility. In this case, the landlord stated that she was providing parking to the tenant but did

not do so. The tenant was fortunate to find parking near the rental unit but it was not as a result of the provision of \$35.00 to the landlord each month. I find that the landlords have failed to comply with the *Act* and I grant the tenants' application for an order that the landlords comply with the *Residential Tenancy Act*. The tenants' evidence, in the form of banking records shows he paid \$35.00 parking fee to the landlord from November 2014 to June 2016. Therefore, the tenant is entitled to recover \$35.00 x 18 months.

Based on these circumstances, I find that the tenant is entitled to recover the \$630.00 in parking fees paid to the landlord, particularly as the landlord was not in compliance with the provisions and the intention of the residential tenancy legislation.

**Rent Increase:** In accordance with the *Residential Tenancy Regulation*, a landlord may impose an Annual Rent Increase up to, but not greater than, the percentage amount specified in the Regulation for 2015 (i.e., 2.5%). The *Act* allows a landlord to apply to an arbitrator for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase.

The landlord did not apply for an Additional Rent Increase pursuant to Part 3 of the *Act* which includes the following provisions,

- 41** A landlord must not increase rent except in accordance with this Part.
- 42** (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:
  - (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
  - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form. ...
- 43** (1) A landlord may impose a rent increase only up to the amount
  - (a) calculated in accordance with the regulations,
  - (b) ordered by the director on an application under subsection (3), or
  - (c) agreed to by the tenant in writing.
- (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase...

Based on the testimony of the tenant, and the evidence submitted for this hearing, I find that the landlord increased the tenant's monthly rent beyond the allowable annual increase amount without the appropriate forms to serve as notice prior to any rental increase. Furthermore, I find that the landlord did not provide notice to the tenant with respect to the increase in rent. Therefore, I find that the tenant is entitled to recover the increased rental amount/\$25.00 overpayment amount for the months of September 2015 to June 2016. I note that the tenant provided banking information proving his rental payments over the course of this tenancy. I find that the tenant is entitled to recover \$250.00 for an overpayment of 10 months of rent.

### Conclusion

I issue a monetary order to the tenant as follows,

Item	Amount
Parking Fee Refund	\$630.00
Rent Increase Refund	250.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$980.00</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: July 25, 2016

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Residential Tenancy Branch

