



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      DRI FF

### Introduction

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

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

### Issues

*Is the rent increase in compliance with the Act?*

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

### Background & Evidence

The rental unit is a unit in an apartment building. The tenancy began on April 1, 2002 with a monthly rent of \$1300.00 plus \$40.00 for parking payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$650.00 at the start of the tenancy. Over the years, the rent has increased to a current \$1580.00 per month and the parking fee has remained at \$40.00. Neither party provided a copy of the original tenancy agreement. The landlord took ownership of the apartment building on June 9, 2016. On July 25, 2016, the landlord served the tenant with a notice to increase the parking fee from \$40.00 to \$75.00 effective September 1, 2016.

The tenant is disputing the parking increase and argues that the increase is not in compliance with the rent increase provisions of the Act. The tenant argues that parking and rent has always been paid together and that the parking is included as part of the tenancy agreement. The tenant provided a letter from the previous building manager stating that rent and parking has always been collected and paid together. The tenant also provided copies of cheques as evidence that the two items were paid for together. The tenant also submitted a rent increase form dated August 30, 2014 as evidence of parking and rent totaled to be paid together.

The landlord submits that parking is not included in the original tenancy agreement and submitted a "resident parking agreement" dated March 31, 2014 as evidence of a separate agreement for the parking space and fee of \$40.00 per month. The agreement is signed by the tenant. The landlord submits that although rent has increased over the years, the parking fee was not included in the rent increase and the parking fee has never increased in the past.

The tenant acknowledged signing the "resident parking agreement" but argues that they were misled with respect to the purpose of the form. The tenant submits that the form was falsely represented as a requirement for filing vehicle registration information with the landlord.

### Analysis

Pursuant to section 43 of the Act, a landlord may impose a rent increase only up to the amount calculated in accordance with the Regulation, ordered by the Director or agreed to by the tenant in writing. The allowable percentage rent increase for the calendar year 2016 is 2.9%.

The definition of "rent" under section 1 of the Act includes money paid in return for the use of services or facilities but does not include a fee prescribed under the *Regulations*. The definition of "service or facility" under section 1 of the Act includes parking spaces that are agreed to be provided by the landlord to the tenant of a rental unit.

In this case, neither party was able to provide a copy of the original tenancy agreement to support the argument of whether or not the parking was included in the original agreed upon rent amount. However, I find the "residential parking agreement" signed in March 2014 established a separate agreement between the parties with respect to parking. I do not accept the tenant's argument that they were misled in regards to the purpose of the agreement and find the tenants are bound by this agreement as they are presumed to have read the agreement before signing it. The agreement is clearly titled "residential parking agreement" and sets out that the tenants agree to pay \$40.00 per

month in exchange for the lease of a parking stall. The agreement also stipulates that one (1) calendar month notice will be issued by the Landlord to the Tenant for any parking stall rent adjustments. I also dismiss the tenant's argument that parking was included in the tenancy as parking and rent has always been paid together in one cheque. This only makes the collection and payment of rent and parking more convenient for the parties involved and does not change the terms of any agreement. Further, I find the rent increase form dated August 30, 2014 provided by the tenant only supports the landlord's position that parking was not included in the rent amount. The rent increase form shows the \$40.00 parking fee separate from the rent amount and is not subject to the rent increase calculation but rather is added to the total rent payable.

Section 7(1)(g) of the *Residential Tenancy Regulations* permits a landlord to charge non-refundable fees for services or facilities requested by the tenant that are not provided under the tenancy agreement. As the parking was not provided or included in the rent under the tenancy agreement, the landlord is permitted to charge a fee for parking as per this section. The rent increase provisions of the Act do not apply to the parking fee in this case.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

### Conclusion

The tenant's application is dismissed.

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: October 31, 2016

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Residential Tenancy Branch