



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Gateway Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, RR, PSF, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord.

At the outset of the hearing the parties agreed that all issues related to cable have been resolved. The tenant confirmed that he no longer sought anything related to the provision of cable and reduced his monetary claim by \$2,703.72. The tenant confirmed that he only sought compensation in relation to parking issues and recovery of the filing fee.

During the hearing the tenant indicated that he thought he had submitted a copy of the tenancy agreement for this tenancy, however, a copy was not found on the file. The landlord had no objection to allowing the tenant to submit a copy by fax after the hearing ended.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation; an order to reduce rent; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 65, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenant submitted a copy of the tenancy agreement confirming the tenancy began on February 1, 2002 as a 6 month fixed term tenancy that converted to a month to month tenancy on August 1, 2016. The agreement stipulates that rent for the basic living space is \$670.00 and parking is \$10.00 both due on the 1st of each month. A security deposit of \$335.00 was paid on January 10, 2002.

The tenant submitted that from the start of the tenancy he had been given two parking stalls for the cost of \$10.00 per month. He testified having two parking stalls was a high priority requirement when he was looking for this accommodation. The parties agreed the tenancy agreement is silent on the number of parking stalls provided for the initial fee of \$10.00 per month.

The tenant stated that in August 2002 the landlord started charging him \$20.00 every month for parking. He stated that effective July 1, 2016 the landlord was increasing the parking cost to \$30.00 per month for each stall.

The tenant testified that it was at this time that he discovered his wife had been paying the \$20.00 per month since August 2002. The tenant's seek compensation in the amount \$3,460.00 for an overpayment of parking charges since 2002.

The landlord has submitted a copy of a handwritten tenant ledger recording payments in the amount of \$20.00 per month for parking at least since 2007. The landlord does not dispute the tenant was paying this amount since at least August 2002.

The landlord submitted that the tenant has been paying this amount for at least 14 years and should not be allowed to be compensated as he has in essence agreed to the increase.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Based on the submissions of both parties and on a balance of probabilities, in regard to the provision of parking, I make the following findings:

1. The tenancy agreement stipulated the rent for parking assigned to this tenancy was \$10.00 per month;
2. Despite no specific provision in the tenancy agreement as to how many parking stalls the tenant was entitled, the practice for the duration of the tenancy was that the tenant was provided with 2 parking stalls.

As a result of these findings it is my determination that the intention of the parties at the signing of the tenancy agreement was that the tenant was to be provided with 2 parking stalls for the price of \$10.00 per month.

I also find that, while the parking fee, is identified in the tenancy agreement as part of the total monthly charge it does not constitute a portion of rent. I make this finding, at least in part, because the landlord charged a security deposit in the amount of ½ of the amount charge per month for the basic living space.

As a result, I find the landlord is entitled to make parking fee increases outside of the constraints of the *Act* regarding annual allowable rent increases.

From the submissions of both parties it is unclear as to why the landlord increased the charge for parking in this tenancy in 2002. That is to say I cannot determine from the evidence submitted by either party if the landlord was simply increasing the fee for this tenancy from \$10.00 per month to \$20.00 or was intending to charge \$10.00 per month for each stall.

However, I note that the ledger submitted by the landlord shows that at least for the period of 2007 forward until July 1, 2016 the tenant was charged one monthly parking fee of \$20.00 per month. Effective July 1, 2016 the tenant has been charged on a monthly basis two \$30.00 charges – both for parking.

As a result, I find the tenant has failed to provide sufficient evidence to meet the burden of proving the landlord changed the terms of the tenancy agreement to charge for two parking stalls in August 2002. Furthermore, I am persuaded by the landlord's argument that the tenant should not be allowed compensation going back to 2002 because he has not raised it as an issue until now.

Estoppel is a legal rule that prevents somebody from stating a position inconsistent with one previously stated, especially when the earlier representation has been relied upon by others. In the case before me, I find because the tenant took no action in regard to any changes in the parking structure or fees that occurred in 2002 the tenant is estopped from making a claim for compensation for that period.

However, I find it is clear that the most recent increase imposed by the landlord to \$30.00 per month for each parking stall does change the nature of the original agreement between the parties. As such, I find the landlord was only allowed to increase the parking to \$30.00 per month and treat the tenant's two stalls as one stall.

In essence, I find that the landlord, by treating the parking as one stall from the start of the tenancy until July 1, 2016 the landlord is estopped from now treating it as two separate parking stalls. Despite this I find the landlord is allowed to increase the cost of parking outside of the allowable annual rent increases provided for under the *Act* and I have no authority to impact the amount of parking increase.

## Conclusion

Based on the above, I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$250.00** comprised of 5 months at \$30.00 per month since the imposition of the parking increase and the \$100.00 filing fee paid by the tenant for this Application for Dispute Resolution. I order the tenant may deduct this amount from a future rent payment, pursuant to Section 72(2)(a).

I also order that effective December 1, 2016 the landlord may only charge the equivalent of the fee for one parking stall but must provide the tenant with two parking stalls for the duration of the tenancy or unless the parties mutually agree to any changes.

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: November 2, 2016

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Residential Tenancy Branch