



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WESTSEA CONSTRUCTION LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FF, O

### Introduction

This hearing dealt with application from the tenant under the *Residential Tenancy Act* (the Act). The tenant applied for:

- authorization to recover his filing fee for this application from the landlord pursuant to section 72; and
- Seeking “other” remedy under the Act, regulation or tenancy agreement.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties acknowledged receipt of the others documentary evidence.

### Issue(s) to be Decided

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

Is the tenant entitled to an order or other remedy under the Act, regulation or tenancy agreement?

### Background and Evidence

The tenants’ testimony is as follows. The tenancy began on February 1, 2011. The tenant is obligated to pay \$1057.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$500.00 security deposit. The tenant testified that a parking stall was included in his rent and always has been included. The tenant testified that even when he lived in another unit in this same building from 2008-2011, parking

was also included in the rent. The tenant testified that his sister also lives in the building and she also has a parking spot included with her rent. The tenant testified that in October 2016 the landlords advised him that they want to start charging him \$30.00 per month for parking or he can give up his spot. The tenant testified that the building manager in 2011, Val Morris, advised him that parking stall #7 was his spot and that it was included in the rent just as it had been from his previous unit. ER also testified that this was the same arrangement that she was given by Val Morris in 2010. The tenant requests to keep his spot without having to pay a monthly fee as was originally agreed to.

The landlord gave the following testimony. JT testified that this was only a verbal agreement and that there is no documentation to support the tenants' position. JT testified that the landlord is being more than fair in asking for \$30.00 per month for parking. RH testified that the building has 80 spots for over 200 units and the parking stalls are at a premium. JT testified that since Val Morris' departure, parking has not been included in the rent.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties and witnesses, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

I find that the tenant is entitled to retain his parking stall without having to pay an additional charge for the following reasons. Val Morris was an employee of the company and had the authority to rent out suites and manage the parking stalls on behalf of the company. The tenant was advised that parking was included in his rent since moving into the building in 2008 and even after he switched units in 2011. In addition, the landlords have been fully aware since 2008 that the subject tenant had parking included in his rent. I find that the landlords have waived the right to charge for this stall or take possession of it as their employee Val Morris included it as part of the tenancy agreement even though it was not noted on the actual agreement; I find this matter to fall under express waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right.

The tenant is entitled to retain his parking stall at no additional cost. As the tenant has been successful in this application he is entitled to the recovery of his \$100.00 filing fee.

The tenant is entitled to a one time rent reduction of \$100.00 from the rent due on February 1, 2017 in full satisfaction of that claim.

Conclusion

The tenant retains his parking spot at no additional cost.

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 05, 2017

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Residential Tenancy Branch