



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAYFAIR PROPERTIES LTD. and BEACH PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with a tenant's application for a Monetary Order to recover overpaid rent from the landlord. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

Has the tenant established that rent was overpaid?

### Background and Evidence

The parties executed a tenancy agreement on June 2, 2015 for a tenancy set to commence on July 1, 2015. The rent was set at \$2,100.00 payable on the first day of every month. The rent was increased by \$60.00 starting November 1, 2016. The tenancy ended in February 2017.

It was undisputed that the tenant paid \$2,150.00 to the landlord each month starting July 2015 and starting in November 2016 the tenant paid \$2,220.00 each month.

The tenant is of the position he overpaid rent by \$50.00 each month which amounts to a total overpayment of \$1,000.00 over the duration of the tenancy. The tenant seeks to recover the overpayment of \$1,000.00 from the landlord.

The tenant explained that he did not realize he was overpaying rent until the tenancy was almost over because the payments were made from an account he does not use regularly.

The landlord was of the opinion the extra \$50.00 the tenant was paying each month was for a parking fee. The landlord pointed out that the tenancy agreement indicates that parking is not provided as a term of tenancy or included in rent. However, the tenant wanted a parking space and the tenant was provided a parking space in the building and under an oral agreement separate from the tenancy agreement the tenant agreed to pay \$50.00 per month for parking. The landlord provided photographs of the tenant's car parked in the underground parking. The landlord also pointed to the pre-authorized debit form completed and signed by the tenant on June 2, 2015 whereby the tenant authorized a payment amount of \$2,150.00 starting July 1, 2015.

The tenant stated he did not recall the conversation with the landlord, or landlord's agent, on June 2, 2015, but the tenant acknowledged that the pre-authorized debit form appears to have his writing and signature. The tenant did not deny that he parked his car in the underground parking. The tenant stated he was surprised when he saw the landlord's evidence.

### Analysis

Section 13 of the Act requires tenancy agreements to be in writing and include certain terms, including the amount of rent payable and the services or facilities that are included in rent. Under section 1 of the Act, parking space is included in the definition of a service or facility.

The tenancy agreement before me provides that the rent is \$2,100.00 per month. Clause 3 of the tenancy agreement provides for the services or facilities to be provided to the tenant by the landlord under the agreement. The box next to "Parking" is not ticked. Nor, is there any indication in clause 6 that parking is included in the total monthly rent obligation. Accordingly, I find that parking was not a service or facility that was to be provided to the tenant as a term of tenancy.

Section 7 of the Residential Tenancy Regulations (the Regulations) provides for non-refundable fees that a landlord may charge a tenant, including:

(g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

The landlord submits that the extra \$50.00 the tenant was paying every month was a parking fee. Since the tenant was provided a parking space and parking space was not

a service or facility required to be provided under the tenancy agreement, I accept that the landlord was permitted to charge the tenant a separate parking fee under section 7 of the Regulations.

As further evidence in support of a parking fee of \$50.00, is the pre-authorized debit form completed by the tenant at the time the tenancy formed; and, the amount of the rent increase that took effective on November 1, 2016 since it is apparently calculated based on the monthly rent of \$2,100.00 as opposed to \$2,150.00. To illustrate: the maximum allowable rent increase in 2016 was 2.9% and on rent of \$2,100.00 the maximum rent increase would have been \$60.90; whereas, the maximum increase on rent of \$2,150.00 would have been \$62.35. The landlord ensured the rent increase did not exceed the allowable amount based on a monthly rent of \$2,100.00.

Based on all of the above considerations, I find I am not satisfied that the tenant overpaid rent by \$50.00 per month. Rather, I find the landlord satisfied me that the tenant was paying rent in the amount stipulated under the tenancy agreement and the Act; plus, \$50.00 per month as a parking fee that is permitted under section 7 of the Regulations. Therefore, I dismiss the tenant's application in its entirety.

### 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: November 10, 2017

---

Residential Tenancy Branch