



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      PSF, OLC, FFT

### Introduction

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

- an order to the landlord to provide services or facilities required by law pursuant to section 62;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

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

### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on March 31, 1986 on a month-to-month basis. Rent, which includes parking, in the amount of

\$816.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$185.00 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

The landlord assumed this tenancy in 2006. On January 1, 2006, the landlord and tenant signed an addendum to the tenancy agreement entitled Addendum B – Parking Agreement (“parking addendum”). The parties submit that at the time of, and since this agreement the tenant has parked his vehicle outside.

In the last two years, the tenant has endured some vandalism and theft to his vehicle. To combat this, the tenant has requested permission to park underground. The tenant submits that he parked underground for the first twenty years of his tenancy and should therefore be entitled to park there once again without incurring any additional fees.

In reply, the landlord testified that he has no record of the tenant parking underground and as far as he knows the tenant has always parked outside. The landlord explained that since 2006, the landlord has implemented fees for the underground parking and because the tenancy agreement does not designate an underground parking spot, the landlord has no obligation to provide this amenity without charge. It is the landlord’s position that the tenant is free to continue parking outside without incurring additional fees, as per his tenancy agreement and addendum.

### Analysis

Under section 13 of the *Act*, a tenancy agreement must set out which services and facilities are included in rent.

Based on the documentary evidence, on March 16, 1986 the landlord and tenant entered into a written tenancy agreement that specifies parking is included in rent. Although this tenancy agreement does not assign a specific parking stall, I find it meets the criteria of section 13 of the *Act* by identifying parking as a facility included in rent.

Section 14(2) of the *Act*, establishes that the parties may amend, remove or change a term, other than a standard term, of a tenancy agreement only if both the landlord and tenant agree to the amendment.

Section 27 of the *Act* addresses terminating or restricting services or facilities. Pursuant to this section, a landlord must not terminate or restrict a service or facility if:

- (a) the service or facility is essential to the tenant’s use of the rental unit as a living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

The evidence shows that the landlord and tenant agreed in writing to amend the tenancy agreement to include provisions on parking by way of the parking addendum. The parking addendum designates the “outside rear” as the tenant’s parking stall and specifies the tenant shall park the vehicle only in the space assigned by the landlord. The parking addendum indicates that there is no additional cost for this parking.

I find the parking addendum is in compliance with section 14 of the *Act* and does constitute a breach of section 27.

Although the tenant may prefer to park underground, the landlord’s refusal to provide this at no extra cost, does not equate to the landlord failing to fulfill the obligation of the tenancy agreement. As evidenced by the tenant’s own testimony and parking addendum, the tenant has parking available to him, in the outside rear. I do not find that the landlord has failed to provide parking or that underground parking is an essential or material term of this tenancy agreement. I therefore decline to make any order with respect to the provision of parking at the residential premises.

As the tenant was not successful in his application, I find he is not entitled to recover the filing fee.

### Conclusion

I dismiss the tenant’s application in its entirety.

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 10, 2018

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Residential Tenancy Branch