



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CEDARVALE APARTMENT HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC OLC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on January 4, 2019. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act;
- An order that the Landlord comply with the *Act*, regulations, and/or a tenancy agreement.

The Landlord and the Tenant both attended the hearing. Each party brought other members with them as support. However, each party will be collectively referred to as the Landlord and the Tenant.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord acknowledged receipt of the Tenant's application and evidence. Although the Landlord pointed out that the Tenant served some of his evidence late, he was okay with including this evidence. The Tenant explained that there was a small amount of evidence that took her a while to locate, which is why it was late. Most of the Tenant's evidence was submitted in accordance with the rules of procedure. Although there were a couple of pages submitted and served to the Landlord by the Tenant about 7 days before the hearing, I will admit this evidence into the proceedings, as the Landlord stated he had a chance to look at it. I further note that it is important to the Tenant's application and it does not appear that the Tenant willfully delayed the service of the documents. In any event, there was only a couple of pages of evidence from the Tenant that was served late, and the Landlord had a chance to read it, so I find it is admissible.

The Tenant acknowledged receiving the Landlord's evidence package.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?
- Is the Tenant entitled to an order that the Landlord comply with the Act of the Tenancy Agreement?

Background and Evidence

The Tenant has applied because she wants her tenancy agreement, and addendum from 2002, upheld, and she does not believe the Landlord should be allowed to increase her parking rate from \$15.00 to \$50.00. The Tenant stated that she has been living in the building since 2001. She stated that she moved in and signed a tenancy agreement in 2001. A year later, she stated that she obtained a car and signed an addendum to the tenancy agreement (provided into evidence) which specifies the following:

5. Rent due and payable in advance by the first day of each month.

Basic Living Space	\$ 630.00
Parking	15.00
<b>TOTAL</b>	<b>\$ 645.00</b>

In this addendum to the tenancy agreement, it also stated that “it is hereby agreed that the vehicle parking in the underground garage be included [in rent].” The Tenant stated that in May of 2018, the new owners took over the building and tried to increase parking rates to all residents up to \$50.00 per month. The Tenant stated that she signed a vehicle registration form, at the request of the Landlord, but she disagrees with the fact that this registration form also comes with a parking rate increase. The Tenant stated she paid the increased fee because she feared getting her car towed.

The Landlord argued that by paying the increased rate and registering her vehicle, the Tenant entered into a mutual agreement to increase parking rates up to \$50.00 per month as of July 2018. The Landlord acknowledged that they wanted to get an accurate

inventory of which vehicles were parked in which spots, and their motive was to accurately document who parked where, and not to broadly increase fees and costs. The Landlord also acknowledged that they do not have a perfect record of their paperwork as this was how they inherited it when the building was purchased in 2018.

The Tenant is looking to have her original agreement, and addendum, upheld and have her parking rate of \$15.00 per month honoured, as this was the amount that was included in rent. The Tenant paid the increased rate of \$50.00 (an extra \$35.00 on top of the original \$15.00) for the months of July, August, September, October and November of 2018. The Tenant acknowledges not paying her parking at all for December 2018 and January 2018. As such, the Tenant is looking to recover \$35.00x5 minus the \$30.00 she should have paid for December and January (2x\$15.00). In total, the Tenant is seeking \$145.00 plus the filing fee she paid.

The Tenant is also seeking to have her parking rate stay at \$15.00, going forward.

### Analysis

A party that makes an application against another party has the burden to prove their claim.

In this case, the issue revolves around parking, and whether or not it is included in rent, whether it is a fee (outside of rent), and whether or not it is governed by the rent increase provisions under the Act.

I find it important to note that the terms of a tenancy agreement cannot be changed without the consent of both parties. The tenancy agreement addendum provided into evidence indicates that the parties agreed that parking for one tenant vehicle would be provided to the tenant for \$15.00 per month. I note that this agreement was not an issue until the new owners bought the building in 2018 and sought to inventory all vehicles, and increase fees somewhat broadly. Although the Tenant registered her vehicle, and began to pay the increased fee, I do not find this amounts to a mutual agreement to increase her fees. It appears as though the Tenant was fearful of being towed, so she paid the extra \$35.00 per month for 5 months, prior to filing this application.

It is important to note that this decision is limited to the application before me, which is only for this one rental unit, and this one Tenant. However, it is critical for the Landlord to consider each tenancy agreement within the building when determining parking fees,

because whether or not the parking fees form part of monthly rent is a critical factor in determining if the parking rates can be increased, and by how much.

I further note that the Act defines “services and facilities” to include parking spaces. At issue is whether the landlord may increase the amount charged for parking and if so, the manner in which this may be accomplished. The difficulty or complication regarding amounts that may be charged for parking (and other services and facilities) arises because the Act defines “rent” to include money payable for services and facilities and whereas the Act and the Regulations also provide that a “fee” may be charged for a service or facility. “Rent” is subject to rent increase limitations in Part 3 of the Act and fees are not subject to Part 3 of the Act.

Section 1 of the Act defines “rent” as follows:

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [regulations in relation to fees];

[my emphasis added]

Section 97(2)(k) of the Act provides that regulations may be created to deal with fees a landlord may charge a tenant. Section 7 of the Residential Tenancy Regulations provides for non-refundable fees a landlord may charge a tenant.

Section 7(1)(g) of the Regulations provides that a landlord may charge a tenant:

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.

[my emphasis added]

Considering section 7 of the Regulations, I find that the landlord may charge a fee at an amount set by the landlord where the tenant requests the service or facility and it was not required to be provided to the tenant under the tenancy agreement. Therefore, I must consider whether the parking space is a service or facility required to be provided to the tenant under the tenancy agreement, or under the addendum signed subsequent to the initial agreement.

In the case before me, I find that parking space is required to be provided to the tenant under the tenancy agreement, which includes the addendum signed in 2002. I make this determination considering:

- the tenancy agreement, which includes the addendum, signed in 2002, clearly indicates parking for this tenant is included in monthly rent;
- there is no other separate parking agreement;
- the tenant had been provided a parking space since 2002.

Since parking space was agreed to be provided I find the charge related to this service or facility meets the definition of “rent” under section 1 of the Act and is not a “fee”. Accordingly, I find the parking charge in this case is limited to rent increases provided under Part 3 of the Act. I note the Landlord has not increased the parking rate of \$15.00 for many years, up until last year. However, I have not placed much weight on the Landlord’s failure to increase this portion of rent. It appears the Landlord could have increased the total amount of rent, including parking AND living space, in accordance with the annual rent increase provisions but did not do so over the years.

Considering all of the above, I find the Landlord may not retroactively go back and seek additional rental revenue for an increased rental rate over the past several years, had they included the parking amount in the annual rent increase. That being said, I find that, going forward, the Landlord is at liberty to include the parking rate (currently \$15.00 and included in rent) when calculating future annual rent increases. The parties both agree that monthly rent is currently \$872.00, with parking on top of that. I find current rent is \$887.00, including parking.

Given my findings above, and after considering the testimony and the evidence from both parties, I find the Tenant is entitled to receive her parking overpayments back for the 5 months she indicated. I award the Tenant \$175.00 as compensation for her \$35.00 parking overpayment for the 5 months, less the \$30.00 she should have paid for December 2018 and January 2019.

As the Tenant's application was mostly successful, and pursuant to section 72 of the *Act* I grant the Tenant the recovery of the cost of the filing fee in the amount of **\$100.00**.

In summary, I find the Tenant is entitled to \$100.00 for the filing fee, plus \$135.00 for the other items as laid out above.

**I authorize** the Tenant to withhold \$235.00 from one future rent payment in full satisfaction of what she is owed. Rent going forward will be \$887.00, which includes parking, and the Landlord is eligible to increase this amount in accordance with the annual rent increase provisions, and no earlier than one year after the last rent increase.

#### Conclusion

I authorize the Tenant to withhold \$235.00 from one future rent payment in full satisfaction of what she is owed.

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 7, 2019

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Residential Tenancy Branch