



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ITZIAR MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI FFT

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order to cancel a notice of rent increase pursuant to section 41; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by teleconference. The tenant, B.V., and the tenant's lawyer, A.P., appeared for the tenant (the "tenant"). The landlord's agent, J.T. appeared for the landlord ("the landlord"). Both parties provided affirmed testimony and both parties were given the opportunity to make submissions as well as present oral and written evidence.

The tenant provided a Canada Post receipt evidencing service of the Application for Dispute Resolution and supporting documents pursuant to Section 89 of the *Act* by registered mail on November 28, 2018. The tenant provided the Canada Post tracking number for the registered mail referenced on the first page of this decision. The landlord did not make any objections to the service of the Application for Dispute Resolution and supporting documents. Pursuant to Sections 89, I find that the landlord was served with the Application for Dispute Resolution and supporting documents.

### Preliminary Matter: Request to Amend Application to Request a Rent Reduction

The tenant requested an authorization to amend his application to include a request for a rent reduction for the past three months relating to the landlord's request to increase the parking fee and charge a fee for the use of a storage locker.

Section 4.2 of the *Rules of Procedure* provides that a party's claim may be amended at the hearing in circumstances that can reasonably be anticipated. In this matter, I find that the landlord could not have reasonably anticipated that the tenant would make such a claim at this hearing. Further, I find that such an amendment, without any prior notice, would be prejudicial to the landlord. Accordingly, I declined to excise my authority under section 64(3)(c) of the *Act* to amend the tenant's application and this matter proceeded without tenant's requested amendment. The tenant is at liberty to file an application to pursue this matter, in accordance with the *Act*.

#### Issue(s) to be Decided

Is the tenant entitled to an order canceling the notice of rent increase pursuant to section 41 of the *Act*?

Is the tenant entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

#### Background and Evidence

The landlord testified that a tenancy agreement was entered into on approximately August 1, 2002 stating a rent of \$690.00 per month. A copy of the tenancy agreement was submitted by the tenant. However, this copy was largely illegible.

Both parties agreed that Clause 3 of the tenancy agreement stated the following with regard to included facilities and services, "Parking "See Rent Below"." The parties further agreed that Clause 5 of the tenancy agreement stated the following under the heading Rent:

"5. **Rent:** The tenant shall pay the rent to the landlord in advance on or before the first day of each month.

Basic Living Space	\$690.00
Parking	////////
Other	////////
TOTAL	\$690.00"

The spaces adjacent to categories of "Parking" and "Other" were blank except for a hand drawn line through them.

The tenancy agreement did not have any provisions relating to the use of storage lockers.

The tenant produced a Notice of Rent Increase from the landlord dated May 1, 2018 with a rent increase from \$900.00 per month to \$936.00 per month, effective on September 1, 2018.

The tenant also produced a correspondence from landlord dated October 10, 2018 which purports to increase fees for parking and storage lockers. Specifically, this correspondence stated the following:

“Beginning February 1, 2019, the following changes will be made to the cost of parking and storage lockers for your building.

Item	Previous Price	2019 Price
Uncovered parking	\$15.00	\$35.00
Covered Parking	\$20.00	\$50.00
Storage Lockers	No Charge	\$35.00

Please ensure that you pay all fees when you pay your rent. Failure to fully pay for parking or storage lockers may result in revocation of that service.”

The tenant also produced multiple rent payment receipts from a rent paying services which itemized the monthly payments including an additional payment of \$20.00 for parking each month. The receipts, prior to the September 2018 rent increase, all stated the following:

“**CAD  
921.99**

Charges

Rent CAD 900.00

Parking CAD 20.00

Service Fee CAD 1.99”

The receipts dated subsequent to September 2018 were the same except the “Rent” entry was increased to \$936.00.

The tenant also produced an affidavit, with exhibits, and a letter from his lawyer stating the tenant's legal arguments.

The tenant testified that it was his understanding that parking was included in the tenancy agreement for an additional fee of \$20.00. However, the tenant testified that parking was not written into the tenancy agreement because the former property management agent thought that it would be better to record the parking in a different document. The tenant testified that the former property manager stated that this would give the parties flexibility to change from covered to uncovered parking as there are different rates for different types of parking.

The tenant also testified that the storage locker was always included in the tenancy agreement. The tenant testified that he has been using the storage locker without a fee since the start of the tenancy, approximately sixteen years ago. The tenant further testified that he has begun to sell his personal possessions to empty the storage locker now the landlord has demanded a storage locker fee.

### Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons:

#### *Parking*

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 *Act* defines "rent" to include money payable for services and facilities, and the regulations also provide that a "fee" may be charged for a service or facility. Further, the *Act* defines "services and facilities" to include parking spaces.

The determination of whether or not the parking fee is considered "rent" is important because rent increases are subject to the limitations in Part 3 of the *Act* whereas 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*];"

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(1)(g) of the Residential Tenancy Regulations (the "*Regulations*") states that a landlord may charge a tenant for "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."

Considering section 7 of the *Regulations* as it is written, and noting that there is no limitation imposed upon the landlord for the amount of the fee, I conclude that the landlord may charge a fee at an amount set by the landlord where the tenant requests the service or facility and it is not required to be provided under the tenancy agreement. Thus, I must consider whether the parking space is a service or facility required to be provided to the tenant under the tenancy agreement.

In the case before me, the tenancy agreement does not have any provisions for the parking by the tenant. The provision in clause 3 of the tenancy agreement for included facilities and services simply states "See Rent Below" in regards to parking and the rent provision in clause 5 relating to parking has been crossed out. There are no other references to parking in the tenancy agreement.

I find that these contract provisions do not establish the existence of a requirement to provide parking under the tenancy agreement. Rather, I find on the balance of probabilities, that the tenancy agreement does not include parking.

I find that the tenant's testimony that the previous landlord's property manager wrote the parking terms in a document separate from the tenancy agreement also supports a finding that the parking terms were subject to a separate agreement from the tenancy agreement.

Further, the tenant's testimony that the parking terms were not written directly into the tenancy agreement because the landlord's former property manager stated

that the terms and rates of the parking could change if the tenant switched from covered to uncovered parking also supports a finding that the parking agreement was not part of the tenancy agreement. Rather, this testimony suggests that the parties specifically intended to exclude parking from the tenancy agreement to maintain flexibility regarding parking. Furthermore, the conduct of the parties subsequent to the execution of the tenancy agreement was consistent with this intention, since the tenant's own receipts showed that the tenant routinely paid the landlord an amount for rent and an additional \$20.00 for parking.

I find that, on the balance of probabilities, that it was the parties intention to have a separate agreement wherein the tenant was charged a fee of \$20.00 per month for parking.

For the above reasons, I find that the tenant's parking space is not a service or facility required to be provided to the tenant under the tenancy agreement. As such, I find that Section 7(1)(g) of the *Regulations* permits that landlord to charge a fee for the parking spaces and such a fee is not rent within the definition of section 1 of the *Act*. Further, I find that I do not have any authority under the *Act* or the *Regulations* to limit or cancel the landlord's increase of this parking fee. As such, I herein dismiss the tenant's application to cancel the parking fee increase.

### *Storage Lockers*

The same issues arise with respect to the storage lockers whether the storage locker fees were rent within the definition of the *Act* or were actually separate service and facility fee. To make this determination, I must again determine whether the use of a storage locker is a service or facility required to be provided to the tenant under the tenancy agreement.

I find that there is no written provision in the tenancy agreement for the tenant's use of the storage lockers. However, I find that the tenant's continued use of the storage locker since the commencement of the tenancy raises the issue of estoppel.

Estoppel is a legal principle wherein a party can waive their right to assert a legal right they might otherwise have. Estoppel arises when:

- the parties have a shared understanding;
- one party conducts itself in reliance on that understanding; and
- that party would suffer a detriment if the other party is now permitted to act inconsistent with that understanding.

In this case, the parties both had an understanding that the tenant was provided free use of the storage locker as part of his tenancy agreement. The uncontroverted evidence shows that the tenant has been using a storage locker during his tenancy for the past sixteen consecutive years and the landlord has never previously charged an additional fee for this facility. I find that parties, by their prolonged conduct, both exhibited an understanding that tenant's use of the storage lockers was an included part of the tenancy agreement.

The tenant conducted himself in reliance on that understanding by storing his personal possessions in the storage locker.

Finally, the tenant would suffer a detriment if the landlord is now permitted to act inconsistent with that understanding. The tenant testified that he will need to sell his personal possessions to empty his storage by to avoid the application of landlord's new storage locker fee. I find that this is a substantial detriment.

Accordingly, I find that the principle of estoppel does apply to this matter and I therefore find that the landlord is now estopped from denying that the tenant's use of his storage locker is included within the tenancy agreement.

I find that the tenant's use of a storage locker is a service or facility required to be provided to the tenant under the tenancy agreement and that any fee for the use of a storage locker is rent within the definition of section 1 of the *Act*. As such, any increase in rent must comply with sections 41 to 43 of the *Act*.

I find that the rent increase demanded by the landlord for the storage locker fees violates section 42 of the *Act* because this request was made less than 12 months after the effective date of previous rent increase, being September 1, 2018. In addition, I find that the notice of rent increase was not in the approved form.

Accordingly, I find that the rent increase of \$35.00 for tenant's use of storage lockers is cancelled and is of no force and effect. In addition, since I have determined that the tenant's use of the storage lockers is an included term in the tenancy agreement, both parties should be aware of the application of section 27 of the *Act* which states provisions regarding the restriction or termination of services and facilities of a tenancy agreement.

Since the tenant has been partially successful in this application, I grant the tenant a partial recovery of the filing fee pursuant to section 72 of the *Act* which the tenant may deduct \$50.00 from a future rent payment on a one-time basis.

### Conclusion

The tenant's request to cancel the notice of fee increase of \$30.00 relating to the tenant's parking space is dismissed without leave.

The tenant's request to cancel the notice of fee increase of \$35.00 relating to the tenant's use of the storage locker is granted.

The landlord's notice for rent increase of \$35.00 for tenant's use of storage lockers is cancelled and is of no force and effect.

The tenant may withhold \$50.00 from a future rent payment on one occasion as reimbursement of partial filing fee pursuant to section 72 of the *Act*.

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 11, 2019

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Residential Tenancy Branch