



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, FFT, OLC

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought an Order disputing a rent increase, an Order that the Landlord comply with the Residential Tenancy Act, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement, as well as recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference at 11:00 a.m. on January 3, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. That said, neither party submitted a copy of the residential tenancy agreement in evidence. The Tenant testified that she was only provided one page of the agreement. The Landlord stated that the agreement was six pages long.

At the conclusion of the hearing on January 3, 2020 I ordered the Landlord to submit a copy of the residential tenancy agreement to the Branch. On January 10, 2020 the Landlord submitted the tenancy agreement. I confirm I reviewed the agreement in making this my Decision. No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

The Tenant also confirmed that she did not oppose the recent rent increase, rather she sought a return of the amounts paid for parking fees recently charged by the Landlord on the basis that parking was a service and facility provided for in her tenancy.

### Issues to be Decided

1. Are the parking charges levied by the Landlord since September 2019 valid?
2. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement?
3. Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The Tenant testified as follows. She stated that her tenancy began May 1, 2017. At the time the tenancy began rent was \$1,225.00 per month. The Tenant testified that she was only provided one page of the residential tenancy agreement.

The Tenant further testified that parking was included in her rent, and she parked in the parking lot in the back of the building which she and the other tenants used without any issue. She stated that there is a total of 10-12 units in the building, and to her knowledge, only four tenants have vehicles. The Tenant further stated that there are 12-13 parking spots. She confirmed that she uses three of the 12 spots. The Tenant testified that throughout her tenancy she had two vehicles and purchased a third one about a year ago. She confirmed that they are all insured.

The Tenant stated that on August 25, 2019 the Landlord put a note on the front and back door of the rental building asking the tenants to not park out back because the lane was going to be painted.

The Tenant stated that on August 29, 2019 another note was posted by the Landlord wherein the tenants were informed that they were required to pay for parking, or they

would be towed. The Tenant stated the Landlord asked for \$50.00 per spot, and as she has three vehicles, she has paid \$150.00 per month since September 1, 2019. She confirmed that she opposed paying this amount but has done so to avoid being towed. The Tenant also stated that despite taking payment for the stalls, others often park in her spots, which have been designated as #2, #3 and #4. The Tenant stated that the Landlord did not provide secured parking, rather he simply painted stall numbers and marked one reserved.

The Tenant stated that in September someone slipped a note under the all the tenants' doors informing the tenants that the rent should be decreased as a result of the Landlord's request for payment for parking. A copy of that note was provided in evidence.

The Tenant also testified that the Landlord refuses to provide receipts for her rent or parking payment. She also stated that despite charging for parking and assigning stalls, the Landlord is not enforcing parking and others continue to park in her designated spots.

The Landlord responded to the Tenant's claim as follows. The Landlord stated that "parking is not free" and that he never signed anything indicating parking was free. He also claimed that *all* the tenants of the building paid for parking as of the date they moved in at a rate of \$50.00 per month. He stated that this Tenant did not pay for parking until September 2019 when he began charging her \$150.00 per month.

### Analysis

The Tenant applies for monetary compensation from the Landlord for parking fees she has paid since September 2019.

As indicated earlier, neither party provided a copy of the residential tenancy agreement in evidence. Following the hearing I was provided with a copy which indicated that parking was not specifically included in the rent.

As section 1 of the *Residential Tenancy Act* provides, a tenancy agreement may be in writing, or oral, express or implied, respecting possession of a rental unit, use of common areas and services and facilities.

Although parking was not specifically provided for in her written tenancy agreement, I accept the Tenant's testimony that for 29 months, from the beginning of her tenancy on

May 1, 2017 until September 2019, she was able to park for free at the rental unit. I further accept her testimony that in the summer of 2019, the Landlord painted lines in the parking area and began charging residents a parking fee.

While parking was not explicitly included in her rent on the written tenancy agreement, I find that it was an implied term of her tenancy. In this case, the Landlord allowed the Tenant to park without charge for two and a half years. It is possible the Tenant was attracted to this rental unit because of this arrangement.

I find that Landlord, by allowing the Tenant to park without charge for two and a half years, is *estopped* from relying on the strict terms of the tenancy agreement with respect to parking.

In the Supreme Court of Canada decision, *Ryan v. Moore*, 2005 2 S.C.R. 53, the Court explained the issue of estoppel by convention as follows:

59 .... After having reviewed the jurisprudence in the United Kingdom and Canada as well as academic comments on the subject, I am of the view that the following criteria form the basis of the doctrine of estoppel by convention:

- (1) The parties' dealings must have been based on a shared assumption of fact or law: estoppel requires manifest representation by statement or conduct creating a mutual assumption. Nevertheless, estoppel can arise out of *silence* (impliedly).
- (2) A party must have conducted itself, i.e. acted, in reliance on such shared assumption, its actions resulting in a change of its legal position.
- (3) It must also be unjust or unfair to allow one of the parties to resile or depart from the common assumption. The party seeking to establish estoppel therefore has to prove that detriment will be suffered if the other party is allowed to resile from the assumption since there has been a change from the presumed position.

Applying the foregoing, I find as follows:

- (1) The Landlord, having permitted the Tenant to park without charge for two and a half years, created a mutual assumption upon which the Tenant relied.
- (2) The Tenant relied on this shared assumption and did not seek alternate accommodation with included parking.

- (3) It would be unjust and unfair to allow the Landlord to resile or depart from the common assumption that this Tenant was not obligated to pay for parking and rely on the strict terms of the tenancy agreement.

Applying the principle of estoppel by convention, I find that the Landlord is estopped from relying on the strict wording of the tenancy agreement as it relates to parking.

That being said, I find that the current situation, whereby the Tenant occupies *three* parking stalls, to be outside the implied parking term. The Tenant testified that until approximately one year ago, she only parked two vehicles on the property. She further testified that when she moved into the rental unit, she informed the Landlord that she had two vehicles. Normally, if parking is included, one stall is provided per unit. Additional charges may apply for additional vehicles. While the current situation has few renters with vehicles, it is possible that situation may change.

The Landlord stated that *all* other tenants pay for their parking stalls. While that may be the case currently, this testimony is inconsistent with the letter provided in evidence by the Tenant, which she says was slipped under her door. Clearly some other renters in the building were also benefiting from free parking until September 2019.

I find this tenancy agreement includes parking for two vehicles. As such, the Tenant is entitled to return of the parking fees she paid to the Landlord for two of the Tenant's parking stalls since September 2019 for a total of **\$500.00**. The Tenant is not entitled to recover the amounts paid for her third stall. Consequently, I find that the Landlord may charge this Tenant an additional \$50.00 per stall for any additional vehicles over the two stalls she has had since her tenancy began.

I also find that the Landlord has not provided receipts for cash payments as required by the *Act*. I find that an Order compelling the Landlord to do so is required in this case.

As the Tenant has been successful in her application, I find she should recover the filing fee.

In furtherance of the above, I Order as follows:

1. This payment of rent includes parking on the rental property for two vehicles.

2. The Tenant is obligated to pay \$50.00 per month, commencing September 2019, for the third parking stall currently occupied by one of her vehicles.
3. The Tenant is entitled to recover the **\$500.00** paid for parking for two stalls in the months September, October, November, December 2019 and January 2020.
4. The Tenant is also entitled to recover the **\$100.00** filing fee.
5. Pursuant to sections 67 and 72 of the *Act*, I authorize the Tenant to withhold **\$600.00** from her next months' rent.
6. The Landlord shall provide the Tenant with receipts for cash payments for rent or parking at the time the Landlord receives such payment. This includes any past payments made.

### Conclusion

The Tenants' request for monetary compensation for parking fees paid is granted in part. I find this tenancy includes parking for two vehicles. Any amounts paid by the Tenant for two stalls is therefore recoverable by the Tenant from the Landlord. The amounts paid for the third stall are not recoverable and the Tenant is obligated to pay \$50.00 per month for the third parking stall.

The Tenant may reduce her next month's rent by **\$600.00** as compensation for the amounts paid for two parking stalls and recovery of her filing fee.

The Landlord shall provide receipts for all cash payments for rent or parking paid.

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 022, 2020

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Residential Tenancy Branch