



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, FFT

### Introduction

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

- an order for the landlord to comply with the Act, the Residential Tenancy Regulations (the Regulations), and/or the tenancy agreement pursuant to section 62 of the Act; and
- an order requiring the landlord to reimburse the filing fee, pursuant to section 72 of the Act.

Tenants VA and SC and Landlord FV were present.

As both parties were in attendance, I confirmed that there were no issues with service of the tenants' application for dispute resolution. The landlord confirmed receipt of the tenants' application package and evidence package with the tenancy agreement, a parking increase Notice issued in 2017 and a Notice of Rent Increase issued in 2019. In accordance with section 89(c) of the Act, I find the landlord was duly served with the tenants' application and evidence package.

All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

### Preliminary Issue – Evidence

The tenants submitted as evidence two Residential Tenancy Branch decisions and did not serve them. These two documents are excluded per section 3.14 of the Rules of Procedure.

### Issues to be Decided

1. Are the tenants entitled to an order for the landlord to reduce parking to \$10.00 per month?
2. Are the tenants entitled to an order requiring the landlord to reimburse the filing fee, pursuant to section 72 of the Act?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of both parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The parties agreed the periodic tenancy started in December 2007. At the outset of the tenancy a security deposit of \$487.50 was collected and the landlord still holds it.

The tenancy agreement signed on November 14, 2007 (submitted as evidence) indicates the \$985.00 rent due on the first day of the month includes "basic living space" (\$975.00) and "parking"(\$10.00). Rent for basic living space has been increased every year and parking has been increased twice. On February 06, 2017 the landlord notified the tenants that parking was increasing from \$10.00 to \$20.00 per month, effective March 01, 2017. Since December 01, 2019 monthly rent was increased to \$1,388.00 for the basic living space and \$30.00 for parking. Both notices of increases were submitted as evidence.

Tenant VA testified parking was listed in the original tenancy agreement as \$10.00 per month and she did not agree to pay more than that amount.

The landlord testified parking is a service unrelated to rent, parking rate increase is not controlled by the government and comparable parking in the neighbourhood costs \$60.00 to \$70.00 per month. The landlord also testified his expenses are going up and it is fair to charge \$30.00 per month for parking.

### Analysis

The Act provides that terms of a tenancy agreement cannot be changed without the consent of both parties (section 14). The residential tenancy agreement signed on November 14, 2007 indicates parking would be provided to the tenants at the rate of \$10.00 per month payable to the landlord.

There is no other written contract or term in the tenancy agreement that indicates the landlord may increase the amount charged for parking.

At issue is whether the landlord may increase the amount charged for parking, and if so, how this may be accomplished.

The Act defines “rent” to include money payable for services and facilities, and 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. However, fees are not subject to Part 3 of the Act.

Section 1 of the Act defines:

- 1 In this Act:  
"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];"service or facility" includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:  
[...]
  - (d) parking spaces and related facilities;(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(1)(g) of the Regulations provides:

- 7 (1) A landlord may charge any of the following non-refundable fees:  
[...]
  - (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.(emphasis added)

I find the tenancy agreement requires the landlord to provide parking because the agreement clearly states in clause 06 that parking is provided and the tenant is paying for it in the monthly rent.

I find the charge related to this service 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 increase provided under Part 3 of the Act.

Section 41 of the Act states that the landlord must not increase rent except in accordance with Part 3.

Part 3, section 42 of the Act states:

Timing and notice of rent increases

42 (1)A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a)if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

(b)if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2)A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3)A notice of a rent increase must be in the approved form.

(4)If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

The Notice of parking increase dated February 06, 2017 is not in the approved form (#RTB-7). Thus, I find that pursuant section 42(3) the parking increase effective March 01, 2017 is null and void.

Section 22 of the Regulation currently limits the allowable rent increase to inflation rate. The maximum allowable rent increase for residential tenancies is 2.5% in 2019, and 2.6% in 2020.

The Notice of Rent Increase dated August 07, 2019 is in the approved form (#RTB-7). However, the form was not completed in accordance with section 22 of the Regulations. The landlord did not indicate how much parking is, how much the increase is, and the new total. Furthermore, parking increase from \$20.00 to \$30.00 is above the 2.5% maximum allowable rent increase for 2019. Thus, the parking increase effective December 01, 2019 is also null and void.

I find there was no valid increase to rent for parking since the outset of the tenancy.

As such, I order the landlord to comply with the original tenancy agreement which provided the tenants parking for \$10.00 per month.

The tenants are at liberty to seek for a monetary award in accordance with section 43(5) of the Act.

I note the landlord may not retroactively apply a rent increase if they did not issue a rent increase in a previous year regarding parking. Such increases are not allowed by the Act.

As the tenants were successful with their application, pursuant to section 72 of the Act, I authorize them to recover the \$100.00 filing fee. I order that this amount be deducted from the rent payment due on March 01, 2020.

#### Conclusion

I order the landlord to comply with the original tenancy agreement which provides the tenants parking for \$10.00 per month.

The tenants are authorized to deduct \$100.00 from the rent payment due on March 01, 2020 to recover the filing fee.

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: February 11, 2020

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Residential Tenancy Branch