



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Argus Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and
- recovery of the filing fee.

The tenant, the landlord's agents (landlords) and landlord's legal counsel attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). 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.

### Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulations, or tenancy agreement and recovery of the filing fee?

## Background and Evidence

The parties submitted a written tenancy agreement showing a tenancy start date of February 15, 2018, a fixed term through January 31, 2019, monthly rent of \$1,200.00, due on the 1<sup>st</sup> day of the month. The written tenancy agreement shows the tenancy would continue for another fixed term of time if a new tenancy agreement is signed and acceptable by both parties 45 days prior to the end of the tenancy, otherwise the tenancy ends at the end of the fixed term and the tenant will be required to vacate the unit before 1:00 p.m. on the last day of the fixed term agreement.

The tenant submitted that the current monthly rent is \$1,261.00 and that his monthly rent has been increased each year, to the maximum allowable amount.

### **Tenant's submissions –**

In support of his application, the tenant submitted that his written tenancy agreement provides for a parking stall included in his monthly rent, and that he has been provided a parking stall since the tenancy began.

To support his submission, the tenant pointed to section 3 a) of the written tenancy agreement, addressing rent.

The tenant submitted that this section of the written tenancy agreement shows his monthly rent beginning at \$1,200.00, along with language outlining rules about the rent payments in conformity with the Act. The last sentence in this sub-paragraph states as follows:

*Parking or storage can be cancelled if payment is not received or with 30 days' notice from either party. **Parking stall (inside) #19 and/or parking stall (Outside) #\*\*\*Additional monthly parking fee \$\*\*\*\*\****

Underneath ~~19~~ in this sentence in the written tenancy agreement, a handwritten notation appears, which states that “new stall #10 to be issued @ move in inside. The initial of the resident manager, MS appears by the handwritten notation.

Subsection b) of section 3 provides for items which are included in the monthly rent, by way of pre-printed items with lines for checking, such as cold water, stove and oven and dishwasher.

The tenant submitted that the landlord issued him, and the other tenants in the multi-unit apartment building, a notice that his parking assignment was being cancelled. Further, the landlord provided the tenant a separate parking stall agreement and instructed him that if he wished to continue having a parking stall, he was required to sign the document and pay a monthly fee of \$60.00 for an outdoor stall and \$75.00 for an indoor stall, beginning November 1, 2020.

The tenant argues that parking is an essential service that the landlord is required to provide due to the unique location of the residential property. The tenant provided a Google satellite image to show that there is no available public or street parking.

The tenant submitted the landlord's actions contravened the written tenancy agreement and the Act, and amounted to an illegal rent increase.

#### **Landlord's legal counsel's submissions –**

In support of the landlord's position, landlord's legal counsel submitted that the landlord allowed the tenant a parking stall at no additional fees; however, parking was not indicated as included in the tenancy agreement or any portion of rental payments during the fixed term as a parking fee.

The legal counsel submitted that parking up until now was just a contingent benefit for the tenant, and the landlord is entitled to cancel the parking upon 30 days written notice. The legal counsel pointed to paragraph 13 e) of the written tenancy agreement to support this argument. This section of the tenancy agreement states as follows:

*The Landlord or tenant may cancel the parking stall with 1 (one) months written notice from the 1<sup>st</sup> of the month.*

The legal counsel submitted that this section of the written tenancy agreement shows that the possibility of cancellation was contemplated, and the tenant signed the contract with that understanding.

The legal counsel submitted that section 3 of the tenancy agreement does not show a parking agreement or fee, just that a parking stall can be reassigned. The landlord issued the tenant a 90 day notice to end the parking assignment.

### Analysis

Based on the relevant evidence, and on a balance of probabilities, I find as follows:

Section 1 of the Act defines “rent” as 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 a security deposit, a pet damage deposit, or a fee prescribed under section 97 (2) (k) of the Act. The definition of “services and facilities” in the Act includes parking.

Section 7(1)(g) of the Residential Tenancy 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.

The issue here is whether parking is required to be provided to the tenant under the tenancy agreement as monthly rent or whether parking is considered a service or facility. If a tenant’s parking is included in their rent, the landlord cannot charge that tenant any additional amount for their current parking space, only increase the tenant’s rent in accordance with the Act.

Typically, when parking is provided as a service with the tenancy and there is not a separate charge for parking, **I find that any payment made for parking is to be considered part of rent.**

**In the case before me, I find that parking space is required to be provided to the tenant as part of rent under the tenancy agreement.** I make this determination considering:

- the tenancy agreement clearly indicates a parking stall assignment for the tenant in clause 3a) in the section dealing with monthly rent;
- there is no other separate parking agreement;
- the tenant was assigned a parking stall and has been provided that parking stall at no charge, since February 15, 2018, the date the tenancy commenced; and,
- there is no indication the tenant ever had to request a parking space after the tenancy formed.

I also found this tenancy agreement was left open to interpretation, as I find sections 3 and 13 cited by the parties to be vague and inconsistent. As the landlord was the

maker of the contract, ambiguity in the terms of an agreement must be interpreted in favour of the tenant.

While the legal counsel has argued that section 13 e) of the tenancy agreement proves that the parties' contemplation of the cancellation of the parking shows the parking was a separate issue, I find it does not. Rather, I find the landlord's use of the requirement of the tenant to provide 30 days' notice further indicates that the parking stall assigned to the tenant at no additional charge indicates a service or facility as part of the monthly rent. A tenant is not required to give notice to terminate one of their services or facilities, if for some reason they would want to do so.

Since a parking space was agreed to be provided when the tenancy agreement was entered into, 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". Therefore, I find the landlord's proposed parking charge in this case is limited to rent increases in accordance with the Act.

Therefore, the tenant is not required to sign or be bound by the *Supplemental Residential Tenancy Agreement: Parking* served by the landlord as it is of no force or effect for this tenant.

I find it appropriate to order the landlord to comply with the provisions of this Decision as well as the Act in dealing with the matter of the tenant's parking, which I have determined is a service or facility required to be provided to the tenant under the tenancy agreement.

As I have found merit with the tenant's application, I grant him recovery of his filing fee of \$100.00.

The tenant is authorized to deduct the amount of \$100.00 from his next or future monthly rent payment to satisfy this monetary award. The tenant is instructed to notify the landlord when making this deduction to ensure the landlord does not serve him with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

### Conclusion

The tenant's application is granted as I have found that parking is included with the tenant's monthly rent and that the landlord is ordered to comply with the provisions of this Decision and the Act.

The tenant was granted recovery of the filing fee and is authorized to deduct \$100.00 from a monthly rent to satisfy this monetary award.

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: September 30, 2020

---

Residential Tenancy Branch