



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      DRI, FFT

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order in relation to a rent increase - Section 43; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the parking cost a part of the rent payable under the tenancy agreement?

### Background and Evidence

The following are agreed facts: The written tenancy agreement consists of two pages. The tenancy started on February 1, 2000. At the outset of the tenancy the Landlord collected \$385.00 as a security deposit.

The Tenant states that prior to entering into the tenancy the Tenant was looking for a unit with available parking as this was a key factor in deciding whether to rent the unit. The Tenant states that the Landlord informed the Tenant that parking was available and as an incentive to attract new tenancies there would be no parking cost for the 1<sup>st</sup> 6 months of the tenancy and that thereafter the parking cost would be \$30.00 per month

payable with the rent due on the first day of each month. The Tenant was given a parking stall at the outset of the tenancy. The Tenant states that at the time it paid a total of 800.00 for rent, of which \$30.00 was the parking component. The Tenant states that on November 5, 2020 the Landlord wrote a letter to the Tenant informing the Tenant that the parking cost would increase by 233% to the amount of \$100.00 per month. The Tenant states that it is the Tenant's understanding that the parking cost was part of the monthly rent payable and submits that this is an illegal rent increase.

The Landlord states that the parking cost is separate from the tenancy agreement and is a parking agreement separate from the tenancy agreement that does not indicate any parking provisions at all. The Landlord argues as a result there is no jurisdiction under the Act to address any parking cost increase. The Landlord states that their accounting also sets out the parking cost separately from the rent. The Landlord states that rental increases do not include the parking cost and that this is supporting evidence that the parking cost is not a part of the tenancy agreement or part of the rent.

### Analysis

The Act defines "Rent" as money paid to a landlord in return for the right to possess a rental unit and for services or facilities. A "service or facility" includes parking where it is provided or agreed to be provided by the landlord to a tenant of a rental unit. Section 7 of the Residential Tenancy Regulations provides that a landlord may charge 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. "Tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities.

Although the parking terms were not reduced to writing or inserted into the tenancy agreement, and I note that the 2-page agreement has very few rental terms, there is no ambiguity on the undisputed terms of the provision of parking and it is undisputed that the agreement was acted on by both Parties for over 20 years. For this reason and

based on the Tenant's undisputed evidence that the parking was offered as an incentive to rent the unit I find that, despite the Landlord's failure to include this term in the written tenancy agreement, the parking formed part of the tenancy agreement and therefore a facility required to be provided under the tenancy agreement. As the Landlord could not collect a separate fee for the parking facility and given the undisputed evidence of the required payment of an extra \$30.00 along with the rent, I find that the parking fee was therefore part of the monthly rent payable. I do not consider the Landlord's failure to include the parking portion monies in the rent increase calculations to be of little weight in making this finding as the Act does not require a landlord to increase rents to the maximum allowable. Further I do not find the Landlord's accounting methods to be evidence of the original agreement. As such I find that the \$30.00 collected for parking are not separate from the rental payment terms, may not be seen as a fee collectable under the Regulation and are rental monies restricted from increases other than as allowed under the Act's provisions for rental increases.

Section 64(2) provides that each decision must be made on the merits of the case as disclosed by the evidence admitted and a decision is not bound to follow other decisions under this Part. Although the Landlord provides a decision made under the Civil Resolution Tribunal proceedings, this decision only referenced a Residential Tenancy Branch (the "RTB") decision and its finding that in that case that the parking/storage cost was not a part of the tenancy agreement. There is no copy of this RTB decision, so I am not able to determine that the facts in that case were the same as facts at hand.

As the Tenant has been successful with its claim disputing the parking increase, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rents payable in full satisfaction of this claim.

### Conclusion

The parking fee of \$30.00 is part of the rent payable any may only be increased under the rent increase provisions of the Act.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: February 01, 2021

---

Residential Tenancy Branch