



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MICHAUD MANOR  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT OLC PSF FFT

### Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of \$101.00 related to parking at the rental property, for an order directing the landlord to provide parking to the tenant, to provide services or facilities agreed upon but not provided under the tenancy agreement, and to recover the cost of the filing fee.

The tenant and a landlord agent, HB (agent) attended the teleconference hearing. The parties gave affirmed testimony, and the parties were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As neither party raised any concerns regarding the service of documentary evidence during the hearing, I find the parties were sufficiently served as a result as both parties confirmed having been served with documentary evidence and having the opportunity to review that evidence prior to the hearing.

### Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance

Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

### Issues to be Decided

- Did the tenant provide sufficient evidence to support that underground parking was included in the original tenancy agreement?
- If not, did the tenant provide other evidence that underground parking should be included in the monthly rent?
- If yes, is the tenant entitled to the reinstatement of underground parking at the rental property?
- If yes, is the tenant also entitled to the recovery of the cost of the filing fee?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on September 1, 2017. The original monthly rent was \$790.00 per month and has never been increased during the tenancy. Monthly rent is due on the first day of each month.

In terms of the parking, the tenancy agreement states the following:

8. RENT PAYABLE MONTHLY:	Basic living space	\$	790.00
	Parking	\$	
	Other	\$	65
		\$	25
	TOTAL (payable in advance monthly)	\$	790.00

(Due on the first of each month.)

Remote control deposit  
key deposit

As a result of the above, parking is blank on the tenancy agreement, however the tenant and the agent confirmed that \$65.00 was paid at the start of the tenancy for a "remote control deposit" (Remote). The parties also agreed that the Remote only controls access to the underground parking area on the rental property.

The tenant testified that at the start of the tenancy in 2017, they were permitted to use parking space 8 and were never charged a monthly parking fee until the landlord send a voicemail 34 months later advising that monthly parking would be a \$50.00 monthly

charge. The tenant admitted that he began to pay for parking between July 2020 and October 2021 but stopped paying for parking after being advised by the landlord that parking was being increased to \$100.00 per month. The parties agreed that the tenant has never signed a parking agreement whereby the tenant has agreed to pay any monthly fee for an underground parking space.

The tenant stated that since November 1, 2021, the tenant has parked their vehicle on the public street and has not paid for parking or has used the underground parking spaces on the rental property. The tenant stated that they have never been given any written notice to vacate parking space 8 but that the tenant left parking space 8 at the end of October 2021 after hearing about the 100% increase in parking to \$100.00 per month.

The agent's position is that parking was never included in the monthly rent and that the tenant only started paying for parking in July 2020 when the tenant was advised that the building was then going to start charging for parking. The agent stated that parking space 8 is no longer available and at the time of the hearing on February 7, 2022, there are no underground parking spaces available on the rental property, only some parking spaces aboveground. The agent stated that the tenant could be given a "deal" at \$40.00 per month for an aboveground parking space if the tenant is interested. The tenant stated they are not interested as the tenant stated there is no difference between parking on the street and the aboveground parking on the rental property.

The landlord stated that the demand for underground parking is so high that the person using parking space 8 wants two parking spaces and was only given space 8 as no other underground parking spaces are available currently.

The tenant was asked why they waited until September 24, 2021, to file their claim for remedy under the Act. The tenant stated that due to Covid they thought that no in-person hearings were taking place. The tenant was advised that hearings have continued via conference call through the pandemic and that in-person hearing were extremely rare under the Act.

The parties agreed that underground parking is secured and can only be opened with a Remote at the time of the hearing.

## Analysis

Based on the above, and on a balance of probabilities, I find the following.

Firstly, I have carefully reviewed the tenancy agreement and I disagree with the tenant that monthly parking was included in the monthly rent due to the parking area of the tenancy agreement being left blank. I find that leaving the parking area blank is the same as crossing out the parking area of the agreement as the parking area does not state \$0.00.

Secondly, I find the landlord made a crucial error on the tenancy agreement by requesting and accepting a \$65.00 remote control deposit (Remote) which I find only controls the underground parking and that by doing so, the landlord either purposely or inadvertently included one underground parking space in the monthly rent. As a result, I find that “estoppel” applies. Estoppel is a rule of law that states when person A, by act or words, gives person B reason to believe that a certain set of facts upon which person B takes action, person A cannot later, to his (or her) benefit, deny those facts or say that his (or her) earlier act was improper. In effect, estoppel is a form of waiver, when person A does not enforce their rights and person B relies on this waiver. Therefore, I find that the landlord asking for a remote control deposit of \$65.00 and providing that Remote when the tenant paid the \$65.00 at the start of the tenancy, and given that I find that the landlord had not created any written parking agreements at the start of the tenancy, that **one parking space** was included in the monthly rent when the tenancy began in September 2017.

I will now address the tenant’s delay in seeking remedy under the Act. Given that the tenant was paying \$50.00 per month for parking between July 2020 and October 2021 and did not file their application to seek remedy under the Act until September 2021, I find that the tenant waived their right to free parking by their own actions between July 2020 and September 2021 when the tenant filed their application for remedy. As such, I find the tenant is not entitled to any compensation for parking fees paid as I find the tenant voluntarily paid for parking and did not comply with section 7 of the Act, which applies and states:

### **Liability for not complying with this Act or a tenancy agreement**

7(2) A landlord or **tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act**, the regulations or their tenancy agreement **must do whatever is reasonable to minimize the damage or loss.** [emphasis added]

I find that waiting between July 2020 and September 2021 is an unreasonable time and that the tenant failed to do what was reasonable, which was to file an application for dispute resolution to deal with the parking fees which the landlord began in July 2020. In addition, I afford little weight to the Covid reason as dispute resolution hearings have continued throughout the pandemic and are held via teleconference.

Given the above, I grant the tenant \$0.00 for July 2020 to September 2021 parking fees as I find the tenant failed to minimize their loss. Regarding the parking fee for October 2021, however, which was paid after the tenant filed their application for remedy under the Act, I grant the tenant **\$50.00** in compensation for the parking fee paid for parking for October 2021.

Section 27(2) of the Act applies and states:

**Terminating or restricting services or facilities**

**27(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord**

**(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and**

**(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.**

[emphasis added]

I find the landlord failed to comply with section 27(2)(a) of the Act noted above, by not serving the tenant with written notice of the termination of free parking. In addition, I find that the rent for the tenant must be reduced by the value of the parking which is currently valued at \$100.00 per month.

Given the above, I award the tenant an ongoing **\$100.00 rent reduction until such time that the landlord provides an underground parking space to the tenant** and confirms such by way of a written letter to the tenant. In reaching this decision, I agree with the tenant that there is no difference between aboveground parking and the street parking in relation to the threat of damage to the vehicle as it is not protected by a secured gate and it not protected from theft from a third party, which makes the underground parking space more valuable. It also supports why the Remote was first issued in 2017, which is a Remote that is of value as it opens the underground secured parking.

Pursuant to section 62(3) of the Act, I make the following order against the landlord:



**I ORDER** the landlord to provide the next available underground parking space to the tenant at no cost to the tenant until the tenancy ends in accordance with the Act.

The above order was made due to the landlord being estopped from charging the tenant for any underground parking costs since October 2021. The landlord **must not charge** the tenant for underground parking for the remainder of the tenancy.

Pursuant to section 62(3) of the Act, I find the tenant's rent is now **\$690.00** per month **until such time that the landlord provides an underground parking space to the tenant confirmed by a written letter served on the tenant.** I also order that once the landlord complies with my order, that the first day of the following month the tenant's rent returns to \$790.00 per month.

As the tenant's application was partially successful, I grant the tenant the recovery of the \$100.00 filing fee pursuant to section 72 of the Act. **I authorize** the tenant a one-time rent reduction in the amount of **\$150.00** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee and the \$50.00 amount owed by the landlord for the repayment of the October 2021 parking fee the tenant was charged.

### Conclusion

The tenant's application is partially successful.

The tenant has been granted a one-time rent reduction of \$150.00 from a future month's rent.

The tenant's new monthly rent is \$690.00 as noted above and will only return to \$790.00 per month once the landlord has complied my order above by providing the next available underground parking space to the tenant as noted above and at no cost per month for the remainder of the tenancy.

The landlord must not charge the tenant for parking for the remainder of the tenancy.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 16, 2022

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Residential Tenancy Branch