



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      PSF, RR, FFT

### Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- An order under s. 65 that the Landlord provide services or facilities required under the tenancy agreement;
- An order under s. 65 for a rent reduction; and
- Return of their filing fee pursuant to s. 72.

E.G., L.G., and D.C. appeared as the Tenants. J.C. and J.P.C. appeared as the Landlords.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenants advise that the Landlord was served with the Notice of Dispute Resolution and their evidence by way of personal service on April 1, 2022. The Landlord acknowledge receipt of the Tenants’ application materials. I find that the Tenants served the Landlords with their application materials in accordance with s. 89 of the *Act* and was received by the Landlord on April 1, 2022 as acknowledged by the Landlord.

The Landlord J.C. confirmed that the response evidence she provided to the Residential Tenancy Branch was not served on the Tenants. Rule 3.16 of the Rules of Procedure requires an application respondent to demonstrate service of their evidence at the hearing and Rule 3.15 requires that evidence to be served at least 7-days prior to the hearing. I find that the Landlord has failed to demonstrate service based on their acknowledgment that it had not, in fact, been served. Accordingly, their evidence is not

admitted into the record and shall not be considered. The hearing proceeded with consideration of the Landlord's oral submissions alone.

### Issue(s) to be Decided

- 1) Should the Landlord be ordered to provide service or facilities?
- 2) Are the Tenants entitled to an order for a rent reduction?
- 3) Are the Tenants entitled to the return of their filing fee?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on September 1, 2021.
- Rent of \$2,950.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$1,475.00 in trust for the Tenants.

A copy of the tenancy agreement was put into evidence by the Tenants.

The Tenant E.G. advised that the tenancy agreement specifies that rent included space for parking 2 vehicles. The tenancy agreement, written in the standard form, confirms this point under clause 3.b)..

I am told that the rental unit is a single detached home in an older and more established neighbourhood. It is in a built-up urban area. The Tenants provide a photograph of the parking spaces, which appear to be a space that would otherwise be a front lawn and is accessible to the street.

L.G. advises that she inspected the rental unit for her co-tenants prior to signing for the lease. The Tenants say that they were promised two parking stalls, which was an important consideration for them. The Tenants confirms that L.G. and D.C. operate an urban farming business in which they make use of a truck and trailer. On the occasion that L.G. inspected the rental unit, she says she saw the space that was available for parking and saw no other vehicles within the space. She understood the parking space on the front lawn as being part of their tenancy.

After the tenancy began, the Tenants indicate that they discovered the tenants renting a basement suite at the property were promised one parking stall. It appears there was a misunderstanding with the basement tenants that only resolved after the Tenants discovered that they were promised one of the stalls. The Tenants provide text messages they had with the basement tenant with respect to this issue. The Tenants argued that the Landlord “over-promised” with respect to parking stalls. The Tenants submit that the space for parking on the front lawn is barely sufficient for parking two sedans and that there is no third parking stall.

The Landlord J.C. indicates that she has owned the subject property since 2015 and that parking was not an issue with her previous tenants. She says that she has described the property as having three stalls: two on the front lawn and one on the street. The Landlord J.C. admits that tenancy agreement is unclear with respect to parking.

The Landlord further advises that she had no knowledge that the Tenants would be using the parking spots for a truck and trailer. The Landlord says that the truck is longer and, when parked in the front lawn area, extends into the sidewalk. The Tenants deny that Landlord had no knowledge that they had a truck on the basis that she knew they operated an urban farming business. The Landlord acknowledges knowing of the Tenants urban farming business and indicates that this factored favourably into her choosing the Tenants for the rental unit.

The Tenants indicate that the trailer has had to be parked at another property and that they were able to arrange this through a business contact. They indicate that street parking is not restricted for resident use only but say that the parking space in front of the residential property is limited by the space needed for vehicles to exit the parking on the front area of the property. The Tenants indicate that parking their truck on the street has proven to be problematic because it blocks access to the other parking stalls in front of the house. I am told there is a bylaw within the municipality that restricts non-residents from parking in front of a house for more than 3 hours. No copy of the bylaw was provided to me.

The Tenants did not indicate there were other vehicles relevant to this dispute, only their truck and trailer. The Tenants refer me to a letter they sent on January 25, 2022 and the Landlord’s responding letter of February 6, 2022 as being relevant to this dispute.

The Tenants seek a rent reduction of \$75.00 per month based on the alleged loss of the promised second parking stall. L.G. advises that this is what it would cost to pay for monthly parking within the area based on her search online. No documentary evidence is submitted on the cost of alternate parking within the area.

### Analysis

The Tenants make an application that the Landlord provide services or facilities and for a rent reduction. Though not pled as such, the Tenants' claim is one of alternate relief as a claim for future rent reduction will not be made if an order is made that the Landlord provide a 2<sup>nd</sup> parking stall.

Pursuant to s. 27 of the *Act*, a landlord cannot restrict a service or facility, except as permitted under s. 27(2), if that service or facility is essential to the tenant's use of the rental unit as a living accommodation or the service or facility is a material term of the tenancy agreement. Section 1 of the *Act* defines "service or facility", which includes "parking spaces and related facilities".

Presently, the dispute arises out of the interpretation of clause 3.b) of the tenancy agreement, which clearly sets out that two parking spots are part of rent. This point was not denied by the Landlord. The parties differ, however, in how many parking stalls are available at the residential property. The Landlord says three: two on the property and one on the street. The Tenants say two on the property.

I have reviewed the photographs provided by the Tenants, one of which has the trailer hitched to the truck. In that photograph, the trailer comes to near to the edge of the property line and hitches to the truck near to the edge of the sidewalk in front of the house. The Truck is blocking the sidewalk in the photographs. Based on the photograph, I would agree with the Tenants that the parking space in front of the house is small, and it appears likely that only two smaller vehicles could park in that area.

The Landlord admits that the tenancy agreement is unclear at least as it relates to parking spaces, though argues that this had not previously been an issue her former tenants. I would agree that there was clearly a miscommunication between the parties with respect to the parking arrangements at the property one that could have easily been avoided by clearly specifying the stalls at the property and the allotment between the various occupants.

The Tenant L.G. who viewed the testified that she observed no vehicles parked at the property. This point was not specifically denied by the Landlord. L.G. left with the impression that two stalls would be available to her, a point that she could not have otherwise known as both stalls in the front of the property were “open” when she viewed the rental unit. The Landlord does not indicate that she told L.G. that there were three stalls and that one of them was occupied by the basement tenant.

The problem with the Landlord’s position, however, is that she has essentially promised a third stall to her tenants when none existed. There are two stalls on the property, a point in which the parties agree. The purported third stall, the one on the street, is not one that could properly be controlled by the Landlord as it was not part of the residential property. The street is public property and, barring bylaws to the contrary, are open for the public to use. The Landlord had no right to promise parking on the street to any tenant. Street parking falls outside the residential property, was not something the Landlord could control or promise, and thus could not form part of any tenancy.

I find that the Landlord promised two stalls to Tenants and that formed part of the tenancy agreement as reflected in clause 3.b). There is no dispute that two stalls are available at the property and the Tenants would have no reason to question that the parking space in the front lawn area would be available to them based on what the Landlord promised and based on L.G.’s observation of an open area for parking at the front of the property. The Tenants relied on the Landlord’s representation with respect to parking and it formed a term within the contract. Two were promised, one was delivered. I have little doubt that advertising a second parking stall would make the rental unit more attractive to prospective tenants.

I agree with the Tenants that the Landlord over-promised the amount of parking stalls. One was promised to the basement tenant. In light of this, it would be inappropriate to order that the Landlord provide a second parking stall as this would prejudice the basement tenant’s rights under their tenancy agreement. The basement tenant is an innocent third-party in this dispute. On this basis, I find that the Tenant’s claim that the Landlord provide services or facilities agreed to under the tenancy agreement, in this case the 2<sup>nd</sup> parking stall, be dismissed without leave to reapply.

The appropriate remedy under the circumstances would be to apply a rent reduction. I find that the Landlord did not provide the 2<sup>nd</sup> parking stall as promised in the tenancy agreement in breach of their obligation under s. 27 of the *Act*. Though I think that the Tenants were naïve in their belief that a truck and trailer could be accommodated at the

property, I accept the Tenants submissions that the parking for the rental unit was desirable to them based on their needs and, had they been able to use the front parking area in its entirety, they would have been able to park their trailer at the residential property. The 2<sup>nd</sup> parking stall was material to the contract based on the parties' intention when the tenancy agreement was signed.

I find that the loss of the 2<sup>nd</sup> parking stall was not correspondently followed by a reduction in the value of the tenancy. The Tenants submit that a rent reduction of \$75.00 per month would be appropriate under the circumstances. They make this submission based on the value of alternate parking arrangements in the area. I agree that this is an appropriate amount. I take note that the neighbourhood is within a built-up urban area with limited parking. Monthly parking rates of \$75.00 seems entirely reasonable under the circumstances and this is an appropriate means of assessing the value of the 2<sup>nd</sup> parking stall.

I find that the Tenants have established their claim for past and future rent reduction. I make an order pursuant to s. 65 of the *Act* that the Tenants are entitled to a past rent reduction claim of \$675.00 (\$75.00 x 9 months (Sept 2021 to May 2022)). I order that future rent be reduced by \$75.00 per month. Prospectively, rent will be payable in the amount \$2,875.00 when it is due under the tenancy agreement (\$2,950.00 - \$75.00).

As the Tenants were successful in their application, I find that they are entitled to the return of their filing fee and the Landlord shall pay their \$100.00 filing fee.

### Conclusion

The Tenants' claim that the Landlord provide services or facilities in the form of the 2<sup>nd</sup> parking stall is dismissed without leave to reapply. Such an order would prejudice the rights of the basement tenant, who is an innocent third-party in this dispute.

The appropriate remedy is a rent reduction claim, which I grant to the Tenants. I order pursuant to s. 65 of the *Act* that the Landlord pay \$675.00 (\$75.00 x 9 months (Sept 2021 to May 2022)) to the Tenants for past rent reduction. I further order pursuant to s. 65 of the *Act* that the Tenants' future rent obligations under the tenancy agreement be reduced by \$75.00 per month to \$2,875.00 (\$2,950.00 - \$75.00).

As the Tenants were successful in their application, I order pursuant to s. 72(1) of the *Act* that the Landlord pay the Tenants \$100.00 filing fee.

In full satisfaction of the amount awarded for past rent reduction and the filing fee, I order pursuant to s. 72(2) of the *Act* that the Tenants deduct **\$775.00** (\$675.00 + \$100.00) from rent payable to the Landlord on **one occasion**.

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: May 16, 2022

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Residential Tenancy Branch