



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding MAYFAIR PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The tenant applied on February 21, 2023 for:

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

On April 14, 2023 the tenant amended his application to seek compensation for monetary loss or other money owed, in the amount of \$3,200.00.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither of the parties raised an issue regarding service of the hearing materials.

Issues to be Decided

- 1) Is the tenant entitled to an order for the landlord to comply with the Act, Regulation, or tenancy agreement?
- 2) Is the tenant entitled to compensation in the amount of \$3,200.00?
- 3) Is the tenant entitled to the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began January 1, 2016, rent is due on the first of the month, and the tenant paid a security deposit of \$825.00, which the landlord holds in trust.

The tenant testified that rent is currently \$1,948.00; the landlord testified that rent is \$1,936.00.

A copy of the tenancy agreement is submitted as evidence by both parties; it states that rent at the beginning of the tenancy was \$1,650.00, and shows no amount for parking fees:

6. **RENT AND FEES.** Rent must be received by the landlord on or before the first calendar day of each month, unless the parties agree in writing in advance to a different date.

Rent	\$ <u>1650.00</u>	per <input type="checkbox"/> month <input type="checkbox"/> week <input type="checkbox"/> other
Parking Fee(s)	\$ _____	(_____) Specify
Other Fee(s)	\$ _____	(_____) Specify
TOTAL RENT AND FEES	\$ _____	

The tenant testified that in February 2023 he received a notice that his parking fee would increase to \$100.00 beginning the next month, which the tenant disagreed with, as parking is included in his rent. The tenant is of the position that as there is no reference to a fee for parking in the tenancy agreement, parking is included in the rent and no increase should be allowed. The tenant testified that he amended his application when he saw from the landlord's evidence that the landlord had been taking an additional \$50.00 a month the tenant did not agree to.

The landlord referred me to the rent increase forms in evidence, submitting that having received them the tenant should have been aware of how much he was paying in rent. The landlord submitted as evidence a tenant ledger beginning in 2016, showing that from the beginning of the tenancy the tenant paid rent plus \$50.00 for parking. Submitted as evidence by the tenant are his bank statements, showing that from the beginning of the tenancy he was paying the rent amount plus \$50.00.

The landlord asked why the tenant did not question in 2017 the additional amount he was paying for parking. The tenant stated that he was not certain, and may have assumed at the time that the amount he was paying over and above the rent was for tax. The tenant submitted that he should have known the additional amount was not for tax, and that there may have been an oversight on his part.

Analysis

The tenant seeks an order for the landlord to comply with the Act, Regulation, or tenancy agreement in relation to the parking fee, and compensation in the amount of \$3,200.00 for parking fees.

Section 7 of the Act includes:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act and [Policy Guideline 16](#) provide that if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 includes:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance; and
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss.
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The tenancy agreement submitted as evidence does not note an additional fee for parking. However, there could have been a separate agreement between the parties on parking, or the landlord could have begun charging the tenant for parking without informing the tenant.

The tenant submitted that throughout the seven year tenancy the landlord has charged the tenant \$50.00 in parking without the tenant's approval. The parties agreed that for each year of the tenancy the tenant has paid \$50.00 a month for parking. Submitted as evidence is the landlord's tenant register, the tenant's bank statements, and rent

increase forms. These documents demonstrate that throughout the tenancy the tenant paid \$50.00 a month for parking in addition to his rent.

The tenant testified that he did not question the additional amount he was paying, and submitted that not doing so may have been an oversight on his part.

I find it would have been reasonable for the tenant to periodically check his banking records and to follow up with the landlord regarding any discrepancy. I find that by not taking action for seven years regarding the \$50.00 monthly parking fee he was being charged, the tenant implicitly waived his right to dispute this fee and failed to act reasonably to minimize his loss.

Considering the foregoing, I find the tenant has failed to prove he is entitled to compensation or an order for the landlord to comply with the Act, Regulation, or tenancy agreement.

As the tenant is unsuccessful in his application, I decline to award the filing fee.

Conclusion

The tenant's application is dismissed.

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 08, 2023

Residential Tenancy Branch