



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding CREEKVIEW HEIGHTS APARTMENTS LTD. C/O  
SKYLINE and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **AAT, OLC, FFT**

### **Introduction**

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (Act) for:

1. An Order to the Landlord to allow access to the unit for the Tenant and/or their guests under Section 70 of the Act;
2. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement under Section 62(3) of the Act; and,
3. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's agent and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Tenant's Notice of Dispute Resolution Proceeding package and evidence served by registered mail on February 1, 2023, Canada Post Tracking Number on cover sheet of decision, the Landlord confirmed receipt, deemed served on February 6, 2023; and,

- the Landlord's evidence package served by registered mail on May 2, 2023, Canada Post Tracking Number on cover sheet of decision, the Tenant confirmed receipt on May 11, 2023, sufficiently served on May 11, 2023.

Pursuant to Sections 71(2)(b), 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

### Preliminary Matter

#### *Unrelated Claims*

At 50 minutes into the hearing, the Tenant wanted to discuss a new matter about a pet agreement. I informed the parties that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenant stated she gave all her evidence about the parking, but that she does have another claim(s). The most pressing issue today was to deal with the Tenant's guest parking issues. I find that the additional issues the Tenant wanted to discuss are not sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenant's request about the parking issue and her claim for the Landlord to allow access by the Tenant's guest to the residential property and the claim for recovery of the application filing fee at this proceeding. The Tenant's other claim(s) is dismissed with leave to re-apply.

### Issues to be Decided

1. Is the Tenant entitled to an Order for the Landlord to allow access to the unit for the Tenant and/or their guests?
2. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?
3. Is the Tenant entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on August 15, 2020. The fixed term ended on August 31, 2021, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,485.65 and \$93.17 for parking payable on the

first day of each month. A pet damage deposit of \$717.50 was collected at the start of the tenancy and is still held by the Landlord.

The Tenant said every time her boyfriend parks in visitor parking, he gets harassed. This has continued throughout the tenancy, and she wants it to stop. The Tenant testified that in September and October 2020 she was harassed and threatened by a resident manager, and she was told that her boyfriend is a tenant, and they will get his car towed. She said he is not a tenant, that he stays once every seven days to once every fourteen days, and when he visited in the evenings, he is there three or four hours at most.

The Tenant asked the manager to consult their camera footage, and after she stated that, she was promised by the manager at that time that there would be no further involvement of his site staff.

In 2022, one particular employee of the property management company had asked the Tenant's boyfriend on three separate occasions if he lived in the rental unit because he parks there often.

The Tenant submits that the differential treatment from the property management company's employees about issuing parking passes for her guest continued. She submitted that other tenant's guests, were allowed to park overnight. The Tenant stated she was not able to get overnight parking passes for her guest as her work hours were similar to the property management's working hours. The Tenant said she is not held to the same standard as others. She points to her emailed complaints dated November 5, 14, 15, and 18, 2022. The Tenant submitted that she did not receive a response from the Landlord about her complaints.

The Tenant submitted that her guest is not permitted overnight parking passes while other tenants are allowed. Finally, because the Tenant's work schedule times are the same as the property management company's, she is not permitted flexibility to attain parking passes. Recently the Tenant's boyfriend has been parking off the residential property to avoid the issues with parking in a visitor spot.

The Landlord started by saying that controlling visitor parking is the most challenging aspect of managing the property because people park in the visitor parking spaces outside their office hours. The tenancy agreement includes a separate Monthly Parking Agreement which is dated May 31, 2020. Section 17 of the tenancy agreement deals

with the rules of parking, and specifies that, *“Automobiles will be parked only in those spaces that the Landlord designates from time to time, and the Landlord will have the right to reassign such parking spaces from time to time as the Landlord, in its sole discretion, may determine.”* The Landlord reserves the right to remove vehicles that contravene their parking rules.

A visitor parking pass is required for overnight visitors for each night, and the Tenant must attend the Landlord’s office in person during office hours to get a parking pass. The Landlord gave their office hours and stated that they do not deliver visitor tags for overnight parking passes to individual tenants. The Landlord testified that visitors contravening the residential property’s parking system is a three-step process. They tag violating cars three times, then they will tow the vehicle. The Landlord maintained they have never towed the Tenant’s visitor’s car.

In response to the Tenant’s evidence about parking issues in November 2022, the Landlord stated this was a time when the Landlord had a landscaping project underway, and they had to move tenant’s cars out from the building parking areas to the visitor parking area. The Landlord pointed to an email reply to one of the Tenant’s complaints explaining that, *“Those cars belong to tenants. We have them parking there while we are doing the landscaping project.”* The Landlord confirmed they knew who was parking in the visitor parking spaces, but it was only for a couple days while the landscaping project was going on.

The Landlord pointed to a fulsome reply letter to the Tenant’s complaints from their regional director on November 22, 2022.

In response to whether the Tenant is held to the same standard as other tenants, the Landlord included correspondence to another tenant who had parked in the visitor parking overnight. The Landlord informed the tenant that, *“Under no circumstances are tenants allowed to use visitor parking overnight, if you need to park a vehicle you are using, regardless if it’s yours or not, you must park it off [property management company] grounds.”* That tenant responded saying, *“Umm excuse me but i needed it for one night and its not my truck.”*

The Tenant responded about her November 2022 visitor parking complaints and pointed to that she had provided a licence plate number to the Landlord. The Tenant stated that the Landlord did not reply about that vehicle. The Tenant stated that that one particular employee of the property management company has approached her

boyfriend and 'harassed him' asking him why is he parking in a visitor parking spot so much while he was once there for only 30 minutes to pick up the Tenant's dog.

The Tenant seeks that her guests are not approached by the property management staff again and asked that repeated question. She said his answer has been the same for the past three years.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The Tenant's boyfriend sometimes spends the night at her home. Overnight visitors require a parking pass. The Tenant's work hours and the property management company's working hours are similar, and the Tenant complains that the property management company does not permit her flexibility to attain parking passes. They did do this a time before by dropping the parking pass at her door, but the property management company is now not conducive to this practice.

Section 1 of the Act defines that residential property includes common areas. I find that parking is part of the rental property.

Section 28 of the Act set out the protection of the tenant's right to quiet enjoyment. The Tenant is entitled to the right of use of common areas for reasonable and lawful purposes, free from significant interference. I find the parking pass process conducted by the Landlord has the effect of interfering with the Tenant's right to use visitor parking spaces, which are common area on the residential property. I do not find, though, that this interference is significant.

Section 30 of the Act talks about the protection of the tenant's right of access. This section states that a landlord must not unreasonably restrict access to the residential property by a person permitted on the residential property by the tenant. I find the Landlord's parking pass process does unreasonably restrict access to the residential property by a person permitted on the residential property by the tenant. Not everyone has the luxury to be able to leave work early or come in a bit later just so they can make sure to access the property management company's personnel during their working hours.

I accept the uncontested testimony that the Tenant's boyfriend resorted to parking off the residential property, for his overnight visits. The Tenant's boyfriend has been questioned even when he has parked in the visitor parking spaces during the day just to pick up the Tenant's dog. The Landlord's tenancy agreement is with the Tenant. If the Landlord has enquiries, these must be directed at the Tenant and not her guests.

Section 13 of the *Residential Tenancy Regulation* (Regulation) states the standard terms that must be included in any tenancy agreement. Section 9 of the Schedule in the Regulation states that the landlord is not permitted to impose restrictions on the tenant's guests, and I find this goes as far as expecting a response to the Landlord's questions. I order the Landlord, and its employees to comply with the Act and Regulation by not asking questions to the Tenant's guests. If the Landlord has a question, they must direct these to the Tenant.

I encourage the Landlord to explore other ways of managing their visitor parking pass delegation which could include utilizing an online platform for instance. Normal office hours do not always meet the needs of their tenants as shown by this Tenant and at least one other not being able to access a visitor parking pass.

As the Tenant is successful in her claim, she is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, deduct \$100.00 from one month's rent due to the Landlord.

### Conclusion

I order the Landlord to comply with the Act and regulations and not to question the Tenant's guests. The Landlord must direct their inquiries to the Tenant.

The Tenant may deduct \$100.00 from one month's rent to recover her application filing fee.

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

Dated: June 12, 2023

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Residential Tenancy Branch