



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, LRE, RR, FF

### Introduction

This hearing dealt with the tenant's application for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; to set conditions on the landlord's right to enter the rental site; authorization to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord. Both parties appeared at the hearing and were provided an opportunity to be heard and to respond to the other parties' submissions.

I heard that the landlord served the tenant with evidence for the hearing via registered mail. The landlord provided a tracking number and stated the registered mail was sent December 3, 2009 but that a search of the Canada Post website showed that the tenant has not yet picked up the evidence package. I was satisfied the landlord served the tenant with the evidence package and accepted it as evidence.

### Issues(s) to be Decided

1. Has the tenant established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
2. Is it necessary to set conditions on the landlord's right to enter the rental site?
3. Has the tenant established an entitlement to reduce rent for repairs, services or facilities agreed upon but not provided.
4. Award of the filing fee.

### Background and Evidence

The tenant alleged that the manager of the park has been entering the tenant's site when she is not home, without proper notice or consent. The tenant called a witness who testified she had seen the park manager on the tenant's site on various occasions but that the witness could not recall specific dates. The tenant requested that she be "left alone" by the manager.

The manager explained that he accessed the tenant's site last summer upon receiving complaints of a possible water leak coming from the tenant's site. Upon entering the rental site, the manager discovered a sprinkler left on and he turned it off. Also, in July 2009 a water line did break and the manager had to call in a contractor and the tenant's site was dug up to make necessary repairs over two days. In early August 2009 a contractor was called by the landlord in to re-install heat tape on the water lines of the tenant's manufactured home since the heat tape had been removed during the water line repair. The contractor was accompanied by the manager to the tenant's site. During this visit the manager noticed that the water shut off risers previously installed by the contractor during the water line repair were no longer above ground level so the manager proceeded to raise the risers. Other than these situations, the manager claimed he has not entered the tenant's site.

On November 6, 2009 the owner wrote the tenant a letter advising the tenant that it had come to the landlord's attention that the tenant had not left the water shut off risers above ground and that contractors have had to uncover the shut off covers twice. Upon enquiry, the landlord stated that she had been advised of this issue by the park manager. The park manager confirmed that the last time he was on the tenant's site was August 6, 2009. Upon further enquiry, the landlord attributed the delay in informing the tenant about the height of the risers due to the landlord's slow response to the information.

Upon hearing rather confusing testimony, it sounds as though the water shut off risers are currently at ground level since top soil was spread around by the tenant. The tenant anticipates the landlord is going to raise the water shut off risers again which the tenant anticipates will impede her ability to access the area underneath her manufactured home and create a trip hazard for her children. The landlord confirmed that it is their desire to raise the water shut off risers again until grass has grown, after which time the risers will be lowered again. The landlord provided a rather cryptic letter from a contractor that appears to indicate that the risers are typically left 6 to 8 inches above ground until landscaping is complete and then they are lowered to the height of the grass or ground cover. The landlord's concern is that if the water shut off risers are left in their current position, the shut offs will be difficult to locate in the event there is another water leak.

In making this claim, the tenant requested compensation of \$155.00 for having to bring in more topsoil, spread the topsoil around and replace plywood skirting on her manufactured home that was removed during the water line repair. The landlord felt a fair settlement would be to compensate the tenant 3 hours of labour (\$60.00) and the cost of plywood (\$50.00); however, upon hearing the tenant spent 1.5 days spreading the topsoil, the landlord agreed to pay the tenant \$155.00 as claimed.

Finally, the tenant alleged that the landlord, or somebody acting on behalf of the landlord, pulled her vehicle out of the way using a bulldozer and the vehicle was damaged. The tenant had not included an amount for vehicle damage in her monetary claim and I dismissed that portion of her claim with leave to reapply.

### Analysis

In recognition of the tenant's monetary claim of \$155.00 and the landlord's agreement to pay the tenant \$155.00 as compensation for the skirting and topsoil I hereby authorize the tenant to reduce a subsequent month's rent to recover this amount. I also award

the \$50.00 filing fee to the tenant. Therefore, the tenant is hereby authorized to reduce rent until \$205.00 has been recovered from the landlord. Where the tenant reduces rent in satisfaction of this award, the landlord must consider the rent paid in full.

With respect to the manager entering the tenant's site, I provide the following provision of the Act that describes the circumstances when a landlord, including a landlord's agent or representative, may enter a tenant's site.

### **Landlord's right to enter manufactured home site restricted**

**23** A landlord must not enter a manufactured home site that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord has an order of the director authorizing the entry;
- (d) the tenant has abandoned the site;
- (e) an emergency exists and the entry is necessary to protect life or property;

(f) the entry is for the purpose of collecting rent or giving or serving a document that under this Act must be given or served.

[my emphasis added]

I did not find the witness' testimony sufficiently detailed to find the manager has violated the Act with respect to accessing the tenant's site; however, based on the manager's own testimony, I find there was likely a violation the time the manager accompanied the heat tape installer and raised the water shut off risers. Such an installation of the heat tape and alteration of the water shut off risers should have been anticipated and proper notice given to the tenant. I find the appropriate resolution to the issue of inappropriate access to the tenant's site is to inform the landlord of the restrictions imposed upon the landlord by the Act and Order the landlord to comply with the Act. As the definition of "landlord" includes agents and representatives of the landlord, the park managers are also required to comply with the Act. Any future violation of the landlord's restricted right to access the manufactured site may be cause for the tenant to make a subsequent Application for Dispute Resolution.

The Act requires the landlord to repair and maintain in accordance with section 26 of the Act. Section 26 provides, in part:

**26** (1) A landlord must

- (a) provide and maintain the manufactured home park in a reasonable state of repair, and
- (b) comply with housing, health and safety standards required by law.

Section 26 of the Act also imposes obligations upon the tenant to maintain a site as follows:

- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas.

As neither party provided me sufficient evidence that the water shut off risers must be set at a specific height by law I make no specific order for such. However, I do accept that it is common practice to install the risers to a height that is slightly above ground where landscaping has not been completed.

As the tenant is responsible for maintaining the manufactured home and health and sanitary standards throughout the site, it is essential that the tenant be able to access the underneath of the manufactured home. It is also essential that property of the landlord that is located at the manufactured home site, such as infrastructure, not be a health or safety hazard to guests or occupants of the manufactured home site.

Therefore, if the landlord does raise the water shut off risers until such time the grass has grown in, the landlord must ensure that the tenant can still access the underneath of the manufactured home and any such alteration be left in a safe manner.

### Conclusion

The tenant is entitled to recover \$205.00 from the landlord for skirting and topsoil and the tenant is authorized to deduct this amount from subsequent month's rent.

The parties have been informed of the landlord's restricted right to access the manufactured home site and the landlord has been ordered to comply with these restrictions.

I make no order with respect to the height of the water shut off risers; however, the landlord has been informed that the landlord must not restrict or impede the tenant's right to access the underneath of her manufactured home or create a health or safety hazard in the site.

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

Dated: December 18, 2009.

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Dispute Resolution Officer