



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

### Dispute Codes:

OLC and FF

### Introduction

This hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants made application for Order requiring the Landlord to comply with the *Manufactured Home Park Tenancy Act (Act)*, *Regulations*, or tenancy agreement and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me. The Tenants submitted two packages of evidence to the Residential Tenancy Branch, copies of which were submitted to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence. The Tenant submitted photocopies of photographs in his evidence package, which are of little evidentiary value, as they are extremely dark and the images are unclear.

### Issue(s) to be Decided

The issues to be decided are whether there is a need to make an Order requiring the Landlord to comply with the *Manufactured Home Park Tenancy Act (Act)*, *Regulations*, or tenancy agreement and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution, pursuant to sections 60 and 65(1) of the *Act*.

### Background and Evidence

The Landlord and the Tenants agree that this tenancy began in 2007 and that the Tenants currently pay monthly rent in the amount of \$398.00. The parties agree that there is a written tenancy agreement but that the tenancy agreement does not specify the boundary of this Tenants' site.

The Landlord and the Tenants agree that the Landlord authorized the occupant of site #129 to construct a carport and that the occupant did construct a carport on site #129.

The Landlord and the Tenant agree that there are no survey lines that divide site 129 and 130. The Landlord and the Tenant agree that site 129 and 130 has never been fully divided by a fence, although the rear portion of both sites is divided by a fence. The parties agree that the sites were previously delineated by a sight line that extends from a utility pole at the rear of the sites to the road at the front of the sites, a portion of which is marked with the fence. The parties agree that they had never discussed the precise boundaries of site 130.

The Tenants contend that the carport is encroaching on the Tenants' site by sixteen inches, which is based on their perception of the sight line between the two properties. The Landlord contends that the carport is not encroaching on the Tenant's site, which is based on his perception of the sight line between the two properties

The Tenants contend that the size of their site has been reduced from 4,400 square feet to approximately 4,390 square feet. The Landlord contends that the size of the site has not been reduced, as the neighboring carpet does not encroach on the Tenant's site. The Tenant submitted documentation that shows the Tenant's manufactured home park site is 4,400 square feet in size.

The Tenants contend that the construction of the carport contravenes Regional District of Nanaimo Bylaw #500, Schedule 3D, which stipulates that "No part of any mobile home or any addition shall be located within 6.0 meters of another mobile home or addition thereto". The male Tenant stated that he believes his neighbor's carport contravenes this bylaw. He stated that the Regional District has elected not to enforce the bylaw.

The male Tenant stated that he believes there is something in the *Act* that prohibits landlords from changing boundary lines of manufactured home park sites, although he could not provide a specific section number.

### Analysis

On the basis of the undisputed evidence presented at the hearing, I find that this tenancy began in 2007 and that the parties have a written tenancy agreement, although the tenancy agreement does not specify the boundaries of the Tenants' manufactured home site.

Section 13(1) of the *Act* stipulates that a landlord must prepare in writing every tenancy agreement entered into on, or after, January 1, 2004. I find that the Landlord did comply with this section of the *Act*.

Section 12 (1)(b) of the *Manufactured Home Park Regulation (Regulation)* stipulates that a tenancy agreement must include the boundaries of the manufactured home site measured from a fixed point of reference. I find that the Landlord did not comply with the *Regulation*, as the aforementioned written tenancy agreement does not specify the boundaries of the home site.

I Order the Landlord to comply with section 12(1)(b) of the *Regulation* by creating an addendum to the existing tenancy agreement that clearly specify the current boundaries of the manufactured home site, which must be set out in a manner that provides the Tenant with a site of 4400 square feet. The boundaries must be clearly established using precise measurements from fixed points on the site. I Order the Landlord to provide the Tenants with a copy of this addendum by April 30, 2011.

Section 14(1) of the *Act* stipulates that a tenancy agreement may not be amended to change or remove a standard term. As the boundaries of the Tenant's site are not considered to be a standard term of the tenancy agreement, as defined by the *Regulations*, I find that this section is not relevant to this dispute.

Section 14(2) of the *Act* stipulates that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment. In my view, this section prohibits landlords from amending the boundaries of a manufactured home park site if the boundaries are included as a term of the tenancy agreement, without the consent of the tenant. As the boundaries of the Tenants' site are not defined by the written tenancy agreement that was signed by these parties and they did not have a verbal agreement regarding the boundaries of the site, I find that section 14(2) of the *Act* is not applicable at this time. I find that the Landlord will be obligated to comply with section 14(2) of the *Act* once the Landlord has complied with my Order to comply with section 12(1)(b) of the *Regulation*.

Section 26(1) of the *Act* requires landlords to provide and maintain manufactured home parks in a reasonable state of repair and to comply with housing, health, and safety standards required by law. In my view, section 26(1) of the *Act* does not grant me authority to require a landlord to comply with all municipal bylaws, particularly when other agencies have methods of enforcing their own bylaws. In my view, Regional District of Nanaimo Bylaw #500, Schedule 3D, does not establish a housing, health, or safety standard over which I have jurisdiction.

### Conclusion

As the Tenants have failed to establish that the construction of the carport on site #129 contravenes any section of the *Act* or *Regulation*, I decline to issue an Order requiring that changes be made to the structure.

As the Tenants have established that the Landlord failed to comply with section 12(1)(b) of the *Regulation* and I have ordered the Landlord to comply with that section, I find that the Tenants' Application for Dispute Resolution has some merit. As I have found that

the Tenants' Application for Dispute Resolution has some merit, I find that the Tenants are entitled to compensation, in the amount of \$50.00, for the cost of filing this Application for Dispute Resolution. Based on these determinations, I authorize the Tenants to reduce the next monthly rent payment by \$50.00, pursuant to section 65(2) of the *Act*.

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: February 28, 2011.

---

Residential Tenancy Branch