



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, MNDC, FF

### Introduction

This hearing dealt with an application by the tenant to dispute an additional rent increase, money owed or compensation for damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

### Background and Evidence

The tenant testified that the landlord did not properly fill out the December 31, 2010 notice of rent increase as the tenant's first name, middle name nor his mailing address appear on the notice. The tenant did acknowledge that his last name, the address where he resides and for which the notice was given is stated on the rent increase form. The tenant also stated that the notice was not given with 3 full month's notice as it was posted to his door on January 1, 2011 and is therefore not valid for April 1, 2011. The landlord refuted the allegation that the notice was posted January 1, 2011 and stated that the notice had been posted on the tenant's door on December 27, 2011.

The tenant stated that there were very large trees growing next to his mobile home that damaged the roof of his residence and these trees were located on pad 88. The tenant stated that he and his neighbour who resides at pad 88 split the cost of the tree removal as the trees had to be removed by a professional arborist at the cost of \$896.00; the tenant is seeking compensation for this expense.

The tenant acknowledged that his tenancy agreement in item #9 Tenant's Property & Fixtures clearly notes that the tenant is responsible for the maintenance and upkeep of Landscaping (trees, shrubs, lawns etc.). The tenant was adamant that it was the landlord's responsibility and not the tenants to maintain the park and ensure that there were no hazards. The tenant maintained that as the trees in question were 30+ years old and not planted by the current tenant, that the landlord should be responsible for the cost of removal and not the tenants.

The tenant stated that the landlord had removed trees on another pad that were a hazard and that the trees were removed in order to place a mobile home on the property. The tenant argued the trees were very tall and a potential hazard and that the arborist had stated such.

The landlord testified that they had removed trees in order to bring a mobile home on to the property but stated that they had not removed any trees because they were a hazard. The landlord also noted that they had not removed trees on any tenant's pads or paid for the removal of trees on tenant's pads.

The tenant stated that his is the only driveway in the park that is concrete, with all the others in the park being asphalt, and that his driveway is in a state of disrepair. The tenant stated that he wants the driveway replaced with asphalt and that the landlord should bear this expense. The tenant maintained that the condition of the driveway was due to normal wear and tear and therefore not the tenant's responsibility. The tenant also stated that the landlord in the past had replaced concrete driveways with asphalt for tenants and as the driveway is hardscape the landlord and not the tenant should bear the responsibility of maintaining the driveway.

The landlord stated that they do not replace driveways for tenants and that they had not done so since 2004. The landlord stated that prior to 2004 they had a different tenancy agreement in place whereby the landlord took responsibility for the driveways. The landlord stated that replacement of the driveway is not an expense the landlord wished to bear. The landlord did state that if common roads required resurfacing in the future that the tenant could arrange for a new driveway at that time and possibly receive discount from the contractor.

The tenant acknowledged that his tenancy agreement in item #9 Tenant's Property & Fixtures clearly notes that the tenant is responsible for the maintenance and upkeep of Driveway(s).

The tenant stated that he is also seeking a decision as to whether or not the current signed tenancy agreement dated June 21, 2008 is legal and binding.

### Analysis

Based on the documentary evidence and testimony I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to have the notice of rent increase set aside.

While the tenant argues that the notice has improperly filled out when the landlord did not fill in every blank on the form, the tenant acknowledged that he knew the notice was in his name and for his mobile home pad. Based on this information I find that a

responsible person would have accepted and understood that this notice of rent increase was in fact for them. As the tenant has not submitted any supporting documentation regarding the date of service, I accepted the landlord's testimony that the rent increase notice was posted on December 27, 2010 resulting in the rent increase being effective April 1, 2011.

In regards to the tenant's request for compensation for repairs, specifically the tree removal and replacement of the driveway, I find that the tenant is not entitled to compensation. The signed tenancy agreement #9 clearly notes the maintenance of landscaping and driveways to be the tenant's responsibility. I have considered if the terms listed in #9 of the tenancy agreement are such that they would be considered "unconscionable" as defined in the Residential Tenancy Regulations and do not find that the terms are oppressive or grossly unfair and that the tenant could have negotiated these items with the landlord prior to signing the tenancy agreement.

I find that the tenancy agreement which was signed by both the landlord and tenant on June 21, 2008 is legal and binding.

The tenant's application is hereby dismissed without leave to reapply.

As the tenant has not been successful in their application they are not entitled to recovery of the \$50.00 filing fee.

### Conclusion

The tenant's application is hereby dismissed in its entirety without leave to reapply.

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 Act*.

Dated: November 3, 2011

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Residential Tenancy Branch