



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *DRI, MNR, MNDC, OLC, ERP, RP, FF*

### **Introduction**

This hearing dealt with an application by a group of tenants pursuant to the *Manufactured Home Park Tenancy Act*. The tenants applied to dispute a rent increase by the landlord and for an order seeking landlord's action to conduct emergency repairs. The tenants also applied for a monetary order for compensation for loss under the *Act* and for the recovery of the filing fee. All parties attended the hearing and were given full opportunity to present evidence and make submissions.

This matter was initially heard on August 03, 2012, was adjourned to September 05, 2012 and was adjourned again to this date – October 11, 2012.

Both parties provided extensive documentary evidence. All parties' testimonies, witnesses and evidence have been considered in the making of this decision. As this matter was conducted over three separate days and almost 3 hours of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

### **Issues to be decided**

Is the landlord negligent in maintaining the Home Park? Is the landlord entitled to a rent increase? Is the tenant entitled to compensation and the recovery of the filing fee?

### **Background and Evidence**

#### **Rent Increase**

On March 31, 2012, the landlord served the residents of the Home Park with a notice of rent increase to be effective on July 01, 2012. The notice was in the approved form and at the legislated rate of 4.3%.

The tenants agreed that the last rent increase was in July 2009 which is three years prior to this rent increase. At that time, the landlord had promised the tenants that the rent would be locked in for three years with the possibility of an additional two years.

The tenants argued that they didn't believe that a rent increase was warranted as the landlord had promised to lock in the rent for another two years and he had also promised to fix the entire water and sewer system and had failed to do so. This issue was discussed at length and the landlord pointed out that in a letter dated April 02, 2009 he had promised a locked rent for three years with a "possibility" of an additional two years at the same rent. He stated that he did not guarantee a locked rent after the three year period.

The landlord also referred to a petition signed by most tenants sometime in 2010 which states *"the landlord has done everything humanly possible to clean up the park, remove all unwanted debris and vehicles, has replaced the old water truck and provided the park with a proper water truck as all water is trucked to the park daily. The landlord has worked with the Ministry of Environment and a local engineering firm to ensure that the lagoon was repaired properly and up to code. We, the residents of XXX would like to commend the landlord for his diligence in making sure all tenants are involved in making our park a safe, presentable and pleasant place to live"*

#### Repairs

Despite the above statement, during the hearing, the tenants testified that the landlord was negligent with regard to maintaining the roads. The tenants further added that the parties have been to arbitration prior to this hearing, regarding this same issue. The landlord was ordered to fix the potholes.

The tenants filed photographs showing the existence of potholes in the roads. During the hearing the landlord argued that he regularly maintains the roads and he agreed to repair the pot holes and continue to maintain the roads in good condition.

#### Electrical Breaker boxes

The tenants stated that the boxes that contain breaker switches are at hip height and easily accessible to children. The tenants were concerned about the condition of the boxes which house breaker switches. The boxes were installed at the time the park came into existence and some of them are falling apart. The tenants expressed concern about the hazards that these boxes could pose to jeopardize the safety of the residents. After discussing this issue at length, the landlord stated that he would check every box and repair if necessary.

#### Snow Removal

The tenants complained about the driveability of the roads when they were covered with snow.

The landlord stated that the last winter was harsh and he had the snow removed four times but it was not enough. The landlord agreed to ensure that the roads and entry and exit areas are free of snow.

#### Sewer maintenance

The tenants stated that problems started about three years ago with sewerage backing up. The landlord replaced the sewer lines two years ago. One of the tenants stated that more recently, he had drainage problems inside his mobile unit. He hired a plumber to take care of the problem. The tenant stated that he did not inform the landlord and the landlord stated that he only found out when he received the notice of hearing. However, the tenants agreed that there are currently no problems.

#### Closure of main entrance to the park

The tenants stated that the landlord had closed off the main entrance and this has caused them a lot of inconvenience. They were also concerned for their safety in the event of an emergency.

The landlord stated that by law, the park must have at least two entrances/exits. The landlord filed an aerial photograph of the park indicating that it has three entrances/exits. The landlord also stated that the main entrance was closed to prevent residents driving over a grassy area and also to facilitate sewer repairs.

The landlord filed a letter dated July 03, 2012, from the supervisor of the emergency response planning program that states "*The recent closure of the east entrance/exit at the XXX Trailer Park does not impede the ability of the residents to egress in either a north or south direction from the XXX Trailer Park via the west entrance/exit. Accordingly, in the unlikely event that the ERP is activated, required evacuation actions are still able to take place despite the closure of the east entrance/exit point*"

#### Construction debris

The tenants filed photographs of debris inside the park in the common areas leaving no safe space for children to play. The landlord stated that the dirt pile is necessary for the construction of the lagoon berm, is not contaminated and is placed in a treed area in front of the Park to facilitate the ongoing work. The landlord agreed to remove the other construction debris within the next two weeks.

### Property values

The tenants stated that since this landlord purchased the Park in 2009, the property values have dropped. The tenants filed copies of their property assessments for the 2010 and 2011 to support their testimony.

### Drinking water

One of the tenants stated that her health suffered due to the presence of contaminated drinking water. A complaint was investigated by an environmental health officer and in a report dated July 25, 2012; it was found that the water was safe to drink.

### Compensation - \$2,500.00 to \$25,000

The tenants are claiming various amounts of compensation for harassment from the landlord. The tenants cited incidents about posting tenant's personal information on the office board, avoiding service by driving away causing the tenant to get a violation ticket for driving without care when she attempted to stop him, disregard for their convenience and safety by blocking the main entrance, not maintaining the roads unless ordered to do so and for causing their property to lose value.

### Analysis

#### Rent increase

Section 34 of the *Manufactured Home Park Tenancy Act* addresses rent increases. This section states that a landlord must not increase rent except in accordance with the *Act*. Section 35 of the *Act* explains the timing and notice of rent increase and states that a landlord must not impose a rent increase for at least 12 months since the last increase, must give the tenant a notice of rent increase at least 3 months before the effective date of the increase and the notice must be in the approved form.

Section 36 states that the landlord may impose a rent increase only up to the amount calculated in accordance with the regulations.

Based on the documentary evidence and oral testimony of both parties, I find that the landlord gave the tenant a rent increase in accordance with the *Manufactured Home Park Tenancy Act*. Section 36(2) states that a tenant may not make an application for dispute resolution to dispute a rent increase that complies with the *Act*.

Therefore this portion of the tenants' application is dismissed. The landlord is entitled to the rent increase that he has provided notice for.

#### Repairs

The landlord agreed to carry out required maintenance. I hereby order the landlord to keep the roads in good condition throughout the year.

#### Electrical breaker boxes

The landlord agreed to inspect all the electrical breaker boxes and perform the necessary repairs.

#### Snow Removal

Again, the landlord agreed to ensure that the roads are free of snow and are driveable in bad weather.

#### Sewer Maintenance

The tenants agreed that at the time of the hearing, there were no issues with the sewer.

#### Closure of main entrance to the Park

Based on the documentary evidence, I find that the closure of the main entrance does not contravene the local bylaws and has also been approved of by the emergency response planning agency. Therefore I find that that the landlord is in compliance with the bylaws and the emergency response planning guidelines.

#### Construction Debris

The landlord agreed to remove all construction debris. I order the landlord to do so within two weeks of receipt of this decision.

#### Property Values

Property values are determined by various factors including the market, the economy, supply, demand etc. The Residential Tenancy Branch has no jurisdiction or control over property values. Therefore the tenants' claim for compensation due to the drop in their property values is dismissed.

#### Drinking water

The tenants stated that the water was not safe to drink. However, upon investigation of a complaint from the tenants, the environmental health officer conducted an analysis of a sample of the complainant's water supply and found that it was safe for consumption.

### Compensation

Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”. As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. Every tenancy agreement contains an implied covenant of quiet enjoyment.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenants have to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord’s actions that rendered the premises unfit for occupancy.

With regard to the tenant’s monetary claim for compensation for the loss of quiet enjoyment, I have reviewed the submissions of both parties and I find that the tenancy changed from being one without problems as indicated in a signed petition in 2010, to one that was very stressful on both parties for different reasons. The petition signed by most tenants in 2010, commends the landlord for his diligence in making sure all tenants are involved in making the park a safe, presentable and pleasant place to live.

It is my determination that the parties found themselves in a situation which had progressively evolved and for which each had made some contribution to its unfolding. Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenants did not provide compelling evidence to support their claim of compensation for harassment and intimidation and therefore the tenants’ claim for compensation is dismissed.

### Conclusion

The tenants have not proven their case and therefore must bear the cost of filing their own applications.

The rent increase is valid and effective July 01, 2012.

I order the landlord to:

- Maintain the roads in good condition throughout the year
- Repair the breaker boxes
- Remove snow from the roads
- Remove construction debris from common areas within two weeks of receipt of this decision

Given the hostile nature of the relationship that exists between the landlord and the tenants herein, both the landlord and the tenant are hereby ordered to comply with all relevant provisions of the *Manufactured Home Park Tenancy Act* the Regulations passed pursuant thereto and the terms of their tenancy agreement.

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: October 24, 2012.

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Residential Tenancy Branch