



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order which allows the landlord to enter upon the rental site and to recover the cost of the filing fee from the tenant.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this decision.

### Preliminary matter

At the outset of the hearing, the agent for the tenants asked me if I could excuse myself from the hearing and have a new Arbitrator assigned. I asked the tenants' agent his reasons for this request, and he stated that he "does not consider me biased", but since I have dealt with both agents at previous hearings and the issue of dispute is the same then, that it would be "better for the branch".

I then asked the landlord's agent if she had any concerns with me being biased, or any other concerns with me hearing this matter. The landlord responded that she had no concerns and wanted the hearing to proceed.

Although I have dealt with both agents when they represented the landlord and the tenant at previous hearings, the tenants in this application for dispute resolution are not the same tenancy that appeared previously.

Under the Residential Tenancy Policy Guideline #10, the fact that one or both of the parties may have appeared before the Arbitrator previously, or that the arbitrator previously denied an application by one of the parties does not by itself support a claim for bias.

Therefore, I find there no reason why this matter should be reassigned to another Arbitrator, as neither party had alleged bias. This hearing proceeded based on the merits of the application and the evidence presented by the parties.

### Issues to be Decided

Should the landlord be granted an order to allow entry upon the rental site?  
Is the landlord entitled to recover the cost of the filing fee from the tenant?

### Background and Evidence

The landlord's agent testified that the tenant filed an application for dispute resolution on October 17, 2013, seeking repairs. Their original application was dismissed with leave to reapply and their current application for repairs is outstanding.

Filed in evidence is a copy of the application filed on October 17, 2013, which in part reads,

"That the Respondent provided the applicant ... with clear specifics on when repairs or replacement of defective driveways will commence and be completed.

... when appropriate drainage (common areas and site specific) repairs and rehabilitation will commence and be completed.

...when the respondent will conduct a tree removal or trimming program to address safety and property damage concerns...

[Reproduced as written]

The landlord's agent testified that since October 2013, she has attempted to gain access to the rental site and on each occasion the tenants have refused her access and because of this action, she has not been able to move forward in addressing any of the tenants' concerns in their application.

The landlord's agent testified that on November 16, 2013, they served the tenant personally with written notice of a site inspection, which the inspection was to occur on November 17, 2013. However, when she was conducting a site inspection on another

site, the tenant TC was yelling at her from across the street and warning her not to come onto her rental site.

The landlord's agent testified that the tenants were again served notice of a site inspection, for an inspection on November 23 - 24, 2013. However, they received a letter dated November 22, 2013, from the tenants which acknowledged they received the notice on November 21, 2013, and the letter indicated they were denying access. Filed in evidence is a copy of the notice for site inspection.

Filed in the landlord's evidence is a copy of the tenants' response, dated November 22, 2013, which in part reads,

"... I feel compelled to advise you that this recent act is a grossly inappropriate and a negative approach to building a cooperative relationship. In that:

- a) the Nov. 17, 2013 request inspection of 2 of the to be inspected lots were not conducted due to the failure of your inspection team to attend upon the sites

....

...

- d) the time periods included in this notices (between 8:00am and 5:00pm over 2 days, including a day generally set aside for religious/family purpose – are an unreasonable expectation of a commitment of our time;

I am compelled to advise you that your request (Notice of Site Inspections received by the lead joint applicants) is unreasonable and a serious affront to our 'expectations of peaceful, quiet enjoyment of our leased lots'...

You are therefore advised that your "Notice(s) of Site inspection" is not acceptable any your inspection team will not be provided welcome access to lots..."

[Reproduced as written]

The landlord's agent testified that on November 23, 2013, they received a further letter from the tenant or their agent, which in part reads,

"the next attempt or any access on our leased lots **without an "order from the Director"** will be answered with criminal complaint of trespass and harassment."

[Reproduced as written]  
[My emphasis added]

The landlord's agent testified on December 09, 2013, the tenants were served again with a notice of site inspection, for an inspection on December 14 -16, 2013. The landlord's agent stated on December 10, 2013, they received a voicemail from the tenant denying access to the rental site. The landlord's agent stated that they responded to the voicemail by letter on December 10, 2013, and on December 11, 2013, they received another letter from the tenants. Filed in evidence is a copy of the site inspection notice, the letter dated December 10, 2013 and the response from the tenant dated December 11, 2013.

The response from the tenants dated December 11, 2013, in part reads,

"You and your officials are specially advised that attempting to enter my site for any reason other than a) health and safety emergency and/or b) after obtaining an "order from the Director", will be considered an act of "trespass and harassment" for which I will file the appropriate criminal complaints."

[Reproduced as written]

The landlord's agent testified on December 14, 2013, she sent again another notice for site inspection by registered mail which was received by the tenants on December 17, 2013, which included a warning letter that if they failed to allow access for the site inspection on December 21 - 22, that they may take further legal action which may include ending the tenancy. Filed in evidence is a copy of the notice of site inspection and a copy of the warning letter dated December 14, 2013.

The landlord's agent testified that they received another letter from the tenants again denying access.

Filed in evidence is a copy of the letter, which in part reads,

"I am in receipt of your Register letter December 14, 2013, [name removed], I am not sure what part of the YOUR NOT DOING AN SITE INSPECTION AT THIS TIME THAT YOU DO NOT SEEM TO UNDERSTAND...."

[Reproduced as written]

The landlord's agent testified that they attended the rental site on December 21, 2013, with an engineer, two arborists and with two police officers and access was denied.

Tenants' response

The tenant TC, testified that the notice for inspection was posted to her door and it was not received until dinner time on November 16, 2013.

The tenant TC, testified that she did not yell at the landlord's agent on November 17, 2013. The tenant stated she waited all day for the inspection to occur and the landlord did not attend or even have the courtesy to inform her that the inspection had been cancelled.

The tenants' agent testified that he was with the tenant the entire time and at no time did the landlord attend to conduct the site inspection. The tenants' agent referred to their documentary evidence, "What Really Happened on November 17, 2013" and a summary signed by the agent BG, and the tenant TC.

"What Really Happened on November 17, 2013", in part reads,

"The landlord in this Hearing would like everyone to believe that the **demanded site inspections conducted on November 17, 2013**, was refused.

...the landlord's representative did not even show up at these two lots. Further, **she choose not to advise these two** Homeowners/Lot Tenants of her not coming to their sites. **She simply left the Homeowners hanging around for the full 4 hrs. scheduled inspection period!**

[Reproduced as written]

The summary dated November 16 and 17, 2013, signed by the tenants' agent BG and the tenant TC, in part reads,

"[TC] was most emphatic that she would not allow access or an inspection, she felt the whole idea/process was a sham being perpetrated by [DM] with all show and no action to follow"

"[TC] signed the "Deny Entry letter" and would deliver same to [DM] if she showed up."....

"... confirmed that [TC], would not allow [DM] to conduct a site inspection."

"I advised that she still to post ... her letter denying access because the desired process for future site inspections is described therein."

[Reproduced as written]

The tenants' agent testified that access for November 23 -24, 2013, was denied because they had already arranged to consult with the other site renters to prepare for their upcoming hearing and confirm their evidence.

The tenants' agent testified that access for December 14-16, 2013, was denied because that was just before the holidays and it was an unreasonable exception to their time.

The tenants' agent testified that access for December 21, 2013, was denied by letter. The tenants' agent stated he is not aware of what happened at the tenants' site on December 21, 2013, as he was at his own site, dealing with his own issues.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the tenants have breached the *Manufactured Home Park Tenancy Act (the Act)*, by interfering with the landlords lawful right or interests in the rental site.

In this case, the tenants filed for dispute resolution on October 17, 2013, and their application listed several items in their details of dispute that they wanted the landlord to address. Since the application was filed the tenants have denied access to the rental site to inspect these items.

Access for the site inspections on November 17, 2013, did not occur. Although each party provided a different version of events, I accept the landlord's agent testimony over the tenant TC, that the tenant TC was yelling at her from across the road and that she did not to enter the rental site because of this action.

I accept the landlord' testimony because the tenant testified that she waited all day for the inspection to occur, however, it is very clear by the summary provided by the tenants and their agent, that they had no intention to allow access or an inspection and that TC, had signed a "Deny Entry letter".

Access for the site inspection on November 23-24, 2013, was again denied by letter, dated November 22, 2013. Although the tenants had sufficient notice and the notice filed in evidence clearly states the purpose was to address the tenants concerns and provided dates and times of the inspection.

The tenants' agent alleged that the tenants and other renters had arranged to meet that particular weekend to prepare for their upcoming hearing; however that is not stated in the letter of November 22, 2013. The letter states, "the 2 days, including a day generally set aside for religious/family purpose – are an unreasonable expectation of a commitment of our time."

Further, even if I were to accept the tenants were meeting on that particular weekend, that is not grounds to refuse a site inspection, as there is no requirement for the tenants to be present.

Access for the site inspection on December 14 -16, 2013, was again denied by letter on December 11, 2013. Although the notice was delivered with sufficient notice and the notice filed in evidence clearly states the purpose was to address the tenants concerns and provided dates and times of the inspection.

Access for the site inspection on December 21, 2013, was again denied by letter on December 18, 2013, although the tenants had received a warning from the landlord that they would be attending the site and any interfere of the site inspection would be grounds to end the tenancy. However, the tenants again denied access when the landlord, two arborists, an engineer and two police officers attended the site.

Where a notice to enter the site is given that meets the time and other requirements set out in the *Act*, but entry is not for a "reasonable purpose", the tenants may deny the landlord access. However, in this case, I find the tenants had no lawful right to deny the landlord access on any of the dates for the site inspections as the tenants had received sufficient notice and the landlord was there for a "reasonable purpose", which was to address their concerns as set out in their application for dispute resolution seeking repairs.

The landlord is the owner of the property and has the legal right to conduct their business as they see appropriate, and that includes, investigating, and inspecting any complaints. The landlord also has the right to hire any experts or any other trades person that they feel are appropriate to assess the situations, such as in this case, an engineer and arborists.

The tenants have a legal obligation not to interfere with the landlord's lawful rights, to repair and maintain the property, especially when they have made an application to have repairs completed and those repairs are for their own benefit.

As I have found the tenants have breached the *Act*, by denying access of the rental site **and** the tenants have also indicated that the landlord **should apply for an order of the Director to allow entry upon the rental site** in their letters, I find the landlord is entitled to an order of the director authorizing the entry, pursuant to section 23(c) of the *Act*.

**Therefore, I Order that the landlord is authorized to enter onto the rental site, without notice to the tenants, between the hours of 8:30am to 6:30pm, Monday through Saturday to address the following concerns: site drainage, septic system, tree service and driveway hazards.**

**This order is effective immediately and will remain in effect until August 31, 2014, during this time the landlord is to complete any inspections and assessments that may be required and complete any work that they find appropriate. Should the scope of the work be determined to be far greater than expected and this time period is not sufficient, then the landlord may apply for an extension of this order.**

The landlord is further authorized to take any photographic, video documentation or acquire any other data that may be required of existing conditions during the site inspections and of any repairs that are made to the site.

Although this is not required by my order, the landlord may, as a courtesy provide the tenants with notice of the site inspections/repairs, to ensure any pets are secured or if any other special requirements are required by the tenants.

Should the landlord seek access to the site for any other “reasonable purpose”, other than stated above, the landlord is required to provide the tenants with notice as required by the *Act*.

**The tenants are ordered that they are not to obstruct or interfere with any of the site inspections or repairs that may be completed.**

The **tenants are cautioned** that interfering with the landlord’s lawful right or interest in the property may be grounds to end the tenancy for cause under section 40 of the *Act*.

The **tenants are cautioned** that should the landlord suffer losses, as a result of a violation of the *Act*, due to their actions or neglect, the landlord may be entitled to seek monetary compensation for those losses.



I note this decision may be used at any future hearing as evidence of the tenants having been cautioned.

The landlord is granted a monetary order in the amount of **\$50.00** to recover the cost of the filing fee from the tenants. Should the tenants fail to pay this amount to the landlord, this order may be enforced in the Provincial Court (Small Claims).

### Conclusion

The landlord is granted an order pursuant to section 23(c) of the *Act*, authorizing access to the rental site.

The landlord is granted a monetary order to recover the cost of the filing fee from the tenants.

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: March 13, 2014

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Residential Tenancy Branch

