



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

MNDC, ERP, RP, OLC, RR, and FF

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss; an Order requiring the Landlord to make emergency repairs to the rental unit; an Order requiring the Landlord to make repairs to the rental unit; an Order requiring the Landlord to comply with the *Manufactured Home Park Tenancy Act* or the tenancy agreement; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

The Tenant stated that on February 27, 2014 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Tenant cited a Canada Post tracking number that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Landlord did not appear at the hearing.

### Issue(s) to be Decided

Is there a need to issue an Order requiring the Landlord to remove or prune trees on the residential property and is the Tenant entitled to compensation for the loss of the quiet enjoyment of their site as a result of a delay in pruning/removing trees?

### Background and Evidence

The Tenant submitted a copy of a dispute resolution decision, dated May 13, 2013, which relates to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for an Order requiring the Landlord to make repairs, an Order requiring the Landlord to comply with the *Act* or tenancy agreement, and to recover the fee for filing that Application for Dispute Resolution. At the conclusion of that hearing an Arbitrator ordered the Landlord to hire a certified arborist to examine the trees and to complete any pruning or tree removal the arborist feels is necessary for safety purposes, by May 31, 2013.

The Tenant submitted a copy of a dispute resolution decision, dated August 07, 2013, which relates to an Application for Dispute Resolution filed by the Tenant in which the

Tenant applied for a monetary Order for money owed or compensation for damage or loss, an Order requiring the Landlord to make repairs, an Order requiring the Landlord to comply with the *Act* or tenancy agreement, and to recover the fee for filing that Application for Dispute Resolution. At the conclusion of the hearing an Arbitrator granted the Tenant compensation for the delay in rendering the trees safe, in the amount of \$50.00, for the months of July and August of 2013. The Arbitrator also authorized the Tenant to reduce the monthly rent by \$25.00 per month, beginning on October 01, 2013 and continuing until such time as the trees are rendered safe.

The Tenant contends that the trees have not yet been rendered safe and the Tenant is seeking to increase the amount of their monthly rent reduction by \$50.00 per month. The Tenant argues that this claim is different than the previous two claims as the Tenant now contends that the removal of the trees is an emergency repair and that they need to be removed for health or safety reasons.

### Analysis

As a previous Arbitrator has already ordered the Landlord to complete any pruning or tree removal that a certified arborist feels is necessary for safety purposes, I find that I do not have the authority to also render a decision on that matter. The principle of res judicata applies here, that is, the matter has already been decided. Therefore, I dismiss the Tenant's application for an Order requiring the Landlord to make emergency repairs to the rental unit, an Order requiring the Landlord to make repairs to the rental unit, and an Order requiring the Landlord to comply with the *Act* or the tenancy agreement.

The Landlord remains obligated to comply with the Order dated May 13, 2013, which requires the Landlord to hire a certified arborist to examine the trees and to complete any pruning or tree removal the arborist feels is necessary for safety purposes.

As a previous Arbitrator has already authorized the Tenant to reduce the monthly rent by \$25.00 per month until such time as the trees are rendered safe, I find that I do not have the authority to increase the amount of that award. The principle of res judicata applies here as well. Therefore, I dismiss the Tenant's application for a monetary Order for money owed or compensation for damage or loss.

I have considered the Tenant's submission that I have the authority to determine this matter because the previous decision relates to the Tenant's application for "repairs" and the current application relates to "emergency repairs". I disagree with that submission.

In my view the issues in dispute are whether or not the trees on the residential property should be pruned or removed in order to render the trees safe and whether the Tenant is entitled to compensation for any delay in rendering the trees safe. These are precisely the issues that were considered at the previous hearings. Whether the issue with the trees is characterized as an “emergency repair” or simply a “repair”, the nature of the issues remain the same and those matters have already been decided.

I find that the Tenant’s Application for Dispute Resolution has been without merit and I dismiss the Tenant’s application to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

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*.

I note that section 86.1 of the *Act* grants the director the authority to order a person to pay a monetary penalty if the director is satisfied that the person has failed to comply with a decision or order of the director; however I do not have authority to impose that penalty.

Dated: March 21, 2014

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Residential Tenancy Branch