



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Tradewinds Estate Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, PSF, LRE, FF, O

### Introduction

This hearing was convened by way of conference call in response to the tenants' applications for an Order for The landlords to comply with the *Manufactured Home Park Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for The landlords to provide services or facilities required by law; to suspend or set conditions on The landlords' right to enter the rental unit; to recover the filing fee from the landlords for the cost of these applications; and other issues.

Seven of the tenants and the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenants provided a significant amount of documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. While the parties submitted a significant amount of evidence only the relevant evidence and testimony of the parties has been considered in this decision.

### Preliminary Issues

Each of the tenants in the 46 units filed an application for Dispute Resolution. Each application was for the same issues. The tenants agreed to all applications being heard at this hearing and a spokesperson BW (the tenant) who is the Chair Person of the Home Owners Association provided verbal testimony on behalf of all the tenants.

Issue(s) to be Decided

- Are the tenants entitled to an Order for The landlords to comply with the *Act*, Regulations or tenancy agreement?
- Are the tenants entitled to an Order for The landlords to provide services or facilities required by law?
- Are the tenants entitled to an Order to suspend or set conditions on The landlords right to enter the rental unit?

Background and Evidence

The tenants' spokesperson BW testified that when the landlords purchased this park in 2002 the people living on the lake front did not have any obstruction to their view of the lake across Crown land and had unrestricted access to the lake. The Home owners who purchased their lake side properties paid higher prices for their homes and pay a higher rent for their pads just for the privilege of living on the lake. Their leases with the landlords were entered into without a solid fence to obstruct their view. WK started to build a fence in May, 2013. The tenant testified that this solid fence has devalued the tenants use and enjoyment of their pad and devalued their assets in their mobile homes.

The tenant agreed that WK has left gaps in the fence for access to the lake, but has verbally informed the tenants that he will be continuing to build the fence across the boundary between the park and the lake thus preventing the tenants' access to the beach front and lake. The tenant agreed that other tenants in the park still have access at this time to the beach and lake through the green space common area in the park unless the landlords intend to prevent this access with the continuation of the fence.

The tenant testified that The landlords have not provided the tenants with a survey showing the boundary of the park and Crown land. The fence appears to have been built on the tenants' lake side pads thus reducing the size of their pads. When the tenants sit on their decks they are not able to see over this five foot fence to the lake. The tenant testified that the landlords could not have built the fence on Crown land as The landlords would have had to have required permission to do so. The tenants' pad sizes have never been documented but historically these pads have been the same size by way of the hedges, fences and structures over 35 years of use.

The tenant testified that there are nine pads on the lake front and three pads are currently affected by this fence; Pads 15, 16 and 17. Six other pads have had markers placed in front of them for future fence building. Furthermore, the tenant testified, that in building these fences WK entered onto the tenants' pads without Notice or permission from the tenants. The work started at 5.00 a.m. causing disturbance to the tenants and WK totally disregarded the tenants' right to privacy and exclusive possession of their pads. The tenants seek an Order for the landlords to comply with s. 21, 22 and 23 of the *Act* and remove the fence within 30 days.

The tenant testified that the landlords have requested that the tenants in units 1 and 20 move their units as they encroach on Crown land. If these units do encroach on Crown land it has nothing to do with the landlords. The tenant testified that they had someone from the Ministry of Forests, Lands and Natural Resources Operations come out to the park to review the matter related to the present natural boundary along the water front for units 1, 2, and 15 to 21. This visit was to clarify if the Ministry had any concerns relating to the structures located near the lakeshore and whether any of these structures may require removal if they are deemed to be located on Crown land. The manager of Land Authorization wrote to the tenants on June 14, 2013 and stated that from their inspection and observation of current high water levels the presence and location of vegetation and the adjacent waterfront lots, as well as the more recent legal survey of adjacent lots 1-3, they were comfortable in offering their opinion that in their minds there are no encroachments onto Crown land that warrants them taking action.

The tenant testified that due to this the landlords cannot ask these tenants to remove units or other amenities that have been built such as fire pits or decks. The tenant testified that furthermore these amenities were in place when the landlords purchased the property 12 years ago and if the landlords were uncomfortable with the positioning of these amenities or units they should have been aware of them before they purchased the park.

The tenants testified that the landlords have not met their obligations under the *Act* with regard to the snow removal and maintenance of the common areas. The tenant testified that the *Act* states that the landlords are responsible for these things including weeding of common areas and these things have rarely been done since the previous manager passed away. The tenants have provided photographic evidence of heavy snowfall in January, 29, 2012 in which the landlords did not take action to have it cleared and which prevented some of the senior residents getting out of the park. Little snow clearance was completed in 2013 or 2014. The tenant testified that in 2014 the tenants wrote to the landlords requesting the removal of snow. In the last three years the tenant testified that one snow fall was cleared. The tenant referred to the statements from tenants provided in documentary evidence pertaining to this.

The tenant testified that the landlords have failed to maintain the common areas by cutting the grass and weeding. The tenant referred to the landlords' submissions in which the landlords have stated that one area shown in the tenants' photographic evidence is adjacent to lot 30; however, the tenants submit that this is untrue and the entire common area adjacent to lot 30 is not maintained. This has been in this condition for a number of years since the previous onsite manager passed away. The landlords did not engage another onsite manager to maintain the park and the landlords rarely come to do the work. The tenant testified that since they filed for this arbitration the landlords have started to maintain the park and it now looks marvellous.

The tenant testified that the tenants who have filed these applications have experienced a loss of enjoyment and suffered harassment by the landlords. The tenant refers to 30

eviction notices given to 30 units in which WK sought to evict those tenants because WK wanted to plant an orchard in the area of their lots. These were elderly tenants who suffered stress due to the eviction notices which were later withdrawn by the landlords. The tenant testified that the landlords' actions could be in retaliation due to previous hearings where The landlords have requested additional rent increases which were overturned at the hearing.

The tenant testified that the landlords have erected a sign at the front entrance which is negative in its wording concerning the park and contributes greatly to devalue the tenants' assets. This sign notifies any prospective purchasers in the park that that the mobile homes on the property are on a monthly rental basis and compensation on redevelopment will follow the *Provincial Tenancy Act*. The tenant testified that this sign has affected the tenants' ability to sell their homes for a fair price as potential purchasers are put off by the sign thinking that the landlords will be redeveloping the property. This in turn has devalued the tenants' assets. The tenant refers to a questionnaire filled in by a number of local realtors who have stated that the sign is detrimental to sales in the park. The tenant testified that in the last few years only 17 manufactured homes have sold in the area, two of which were located in this park. The tenant testified that realtors inform prospective purchasers that there is always a possibility of rezoning in the park and therefore it is not necessary for The landlords to put up this sign as it makes prospective purchasers think that redevelopment of the park is imminent. The tenants seek an Order to have the sign removed from the entrance to the park or to have some positive wording placed on the sign instead.

The tenant testified that the landlords have breached the tenants' right to quiet enjoyment because the landlords make:

- Repeated requests for voluntary rent increases
- Repeated arbitrations for rent increases
- Serves eviction notices for frivolous reasons
- Actions to devalue the tenants' assets

- Construction of the lake front fence
- Lack of snow removal
- Lack of proper common area maintenance
- The obtrusive sign at the front entrance.

The tenants request an Order for The landlords to comply with the *Act* with regard to snow removal and the maintenance of common areas including weeding and grass cutting. The tenants seek an Order to suspend or set conditions on the landlords' right to enter the rental units or pads. The tenants also request that consideration be given to applying administrative penalties to the landlords due to the landlords' ongoing actions.

WK testified for the landlords and states that the fence is only in front of two units 15 and 16. A fence has not been placed in front of 17 as their deck extends over the property line. WK testified that the two units have only had a five foot fence placed in front of their units and on one of these units the fence is actually lower than the existing hedge. WK refers to his photographic evidence showing this. WK testified that the fence has been built with gaps to allow the tenants access to the lakefront. WK testified that the fence has not been built on the tenants' pads and has been located a foot onto Crown property as the letter provided by the tenants concerning encroachment onto Crown land implies that the Crown do not have issues with this. WK disputes that he entered the tenants' pads to erect the fence panels. WK testified that they are going to apply to acquire the Crown land adjacent to the lake and therefore the boundary line will move in that area of the park and the pads 1, 18, 19 and 21 will then have larger pads in line with the current size allowance.

WK testified that any future fencing put up will be an open style fence as depicted in the landlords' photographic evidence showing an open style fence they wish to erect. WK testified that if they are given permission to put up these open style fences then the landlords are agreeable to remove the cedar fencing. WK refers to the letter from the Town Council who requested that screen fences are erected between adjacent

properties. WK testified that the tenant BW also complained at previous hearings about snow blowing and the landlords erected the cedar fence to prevent snow blowing from the lake.

WK testified that they do remove the snow on a regular basis but have to wait until the snow is two inches thick before the snow plow can remove it. WK disputes the date shown on the tenants' photographs and testified that they have documentation showing that the snow was cleared prior to January 29, 2012. Snow removal was arranged on January 23, 2012 for this park and an adjacent park. WK refers to an email from a tenant RF dated January 28, 2012 in which that tenant has thanked WK for snow removal. There was no further snowfall on January 29, 2013. WK testified that they do not live in the local area but do watch the 'weather cam' everyday and they have their own snow removal equipment and a maintenance man who lives just outside the park. WK testified that they take notice of any requests made by the tenants to remove the snow if it is more than two inches thick.

WK testified that they do maintain the common areas but this does not start until May each year when the irrigation is turned on. WK refers to the tenants' photographic evidence showing close up pictures of weeds and grass. WK testified that this photograph shows that the common area has been cut and the area with the weeds and grass is an area that is part of the pad for the unit on pad 30. Their pad extends five feet out on that side and those tenants have not maintained their pad. WK testified that they have changed their maintenance person this year and the property is now maintained to an even better standard as agreed to by BW in his testimony. WK testified that last year the weather was very hot and the grass did get brown. The landlords have now installed extra vegetation and increased the irrigation and the grass is cut every 10 days. WK testified that the tenant on pad 30 has not maintained his pad behind his unit and when they walked around the unit with the tenant's wife she did pull some of the weeds. WK testified that they have requested to those tenants that they maintain their yard; however, no action has been taken so far. WK testified that the dates on the tenants'

photographs cannot be relied on as WK keeps a log for maintenance and this log shows the grass was cut two days before the date shown on the tenants' photographs.

WK testified that the sign was put up at the front entrance in April 2007. WK disputes that this has affected sales in the park and testified that there has been 26 units sold in the park since that time. This is normal when based against sales in other parks for the size of the park. WK testified it would not be in the landlords' best interest to prevent sales in the park but states that purchasers have a right to have this information. WK testified that realtors do not always notify potential purchasers of these facts or that the tenants have built illegal sheds or decks. This would be more detrimental to sales than the sign. WK testified that they had to inform the prospective purchasers of unit 21 that the unit encroached over the property line as the realtors did not inform them. WK testified that the tenant BW is a realtor who has also sold property in the park.

WK testified that they gave 30 tenants an eviction notice as the landlords wanted to put in an orchard. The tenants' lawyer asked for an extension and the tenants' lawyer and the landlords' lawyer were in negotiations for six months regarding this matter. WK testified that they had the necessary plans in place and did not require permits for rezoning. WK testified that they did not go ahead with their plans as they received a letter from the Minister who placed a high importance on low cost housing. WK testified that upon following the advice of the Minister the landlords got a rent rise of \$62.00 a month for 12 of the units.

WK testified that he does not enter the tenants' pads unless he has to serve notices or collect or return rent cheques. WK testified that the work done on the fence was all completed from the Crown land. WK testified that they have never had complaints from tenants about this and one tenant is attempting to stir things up in the park. WK testified that the tenants are able to put anything in writing to the landlords and the landlords have not had anything from the majority of tenants. Most of the issues they have received concerns issues between the tenants.



WK testified that they can purchase a brush for the powder snow cover at a cost of \$45,000.00. If all the tenants chipped in \$6.00 extra a month the landlords would be able to purchase this brush and clear the snow when it is a light powder covering. WK testified that most tenants do not put snow tires on their vehicles and this is the reason they cannot get around when there is heavier snow.

The tenant cross examined WK and asks WK if the survey on L10 of the landlords' documentary evidence was done professionally or is it a sketch plan only. WK responded that it is from a registered surveyor and contains the correct measurements for the park. This plan came from the larger plan done in 2002 and this section shows the northern boundary. The tenant states he spoke to the surveyor and was told it was a sketch plan. WK responded that it is a surveyed plan. The tenant states that because there are no boundary posts, how the landlords could know the fence went up a foot onto Crown land. WK responded that how would the tenants know it was not within Crown land.

The tenant responded to WK's testimony concerning the dates on the tenants' photographs and testified that the dates maybe out by a couple of days; however, the statements from all the tenants show that regular snow clearance did not take place in the park.

The tenant DE asked WK why WK said the tenant's letter sent in December 2013 regarding snow clearance was frivolous. WK responded that when they received this letter from DE they watched the 'weather cam' and phoned another tenant WC to get their opinion on the snow. That tenant WC said the snow had been cleared so they deemed the letter from DE to be frivolous as they can only clear snow over two inches deep.

The tenant asked WK if they intended to put in an open style fence why did WK put in the cedar fence. WK responded that the cedar fence went in because of the complaints made at a previous hearing from BW about snow blowing and because the town letter

stated it had to be a screened fence between adjacent properties. The park and Crown land are considered to be adjacent properties.

The tenant asked WK about the landlords practise for maintenance in the common areas and the weed blossoms and length of grass alongside unit #30. The tenant states that the photograph was actually taken on May 10 and has nothing to do with unit # 30. WK responded that the pictures were taken before WK had started the grass maintenance in May and five feet of this grassland is part of pad 30.

The tenant testified that he did not coerce other tenants into joining the arbitration and people were free to make their own comments on the forms.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants' claim for an Order for the landlords to comply with the *Act*, regulations or tenancy agreements; I have considered this section of the tenants' claim that the landlords have breached sections 21, 22 and 23 of the *Act*. These sections of the *Act* state:

### **Terminating or restricting services or facilities**

**21** (1) *A landlord must not terminate or restrict a service or facility if*

- (a) the service or facility is essential to the tenant's use of the manufactured home site as a site for a manufactured home, or*
- (b) providing the service or facility is a material term of the tenancy agreement.*

*(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if WK*

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and*
- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.*

**Protection of tenant's right to quiet enjoyment**

**22** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the manufactured home site subject only to WK's right to enter the manufactured home site in accordance with section 23 [landlord's right to enter manufactured home site restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

**Landlord's right to enter manufactured home site restricted**

**23** *A landlord must not enter a manufactured home site that is subject to a tenancy agreement for any purpose unless one of the following applies:*

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
- (b) at least 24 hours and not more than 30 days before the entry, WK gives the tenant written notice that includes the following information:*
  - (i) the purpose for entering, which must be reasonable;*

*(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*

*(c) WK has an order of the director authorizing the entry;*

*(d) the tenant has abandoned the site;*

*(e) an emergency exists and the entry is necessary to protect life or property;*

*(f) the entry is for the purpose of collecting rent or giving or serving a document that under this Act must be given or served.*

The tenants argue that the landlords have restricted the view of three tenants by erected the fence on their property and reduced the size of their lots with this fence. The tenants also argue that the fence has diminished the tenants' enjoyment of their homes because they cannot see the lake or enjoy the natural beauty of the lake. The tenants argue the landlords have restricted a service or facility by erecting this fence. WK argues that the fence has been built on Crown land and not the tenants' pads, the fence does not restrict the tenants' view of the lake and all the tenants still have access to the beach and lake.

I have reviewed the documentary evidence and testimony before me concerning the fence and the pads and find I have insufficient evidence from the tenants to show that the fence has been built on their pads and not on Crown land. Therefore, I am unable to determine that the fence has reduced the size of the tenants' pads. Furthermore, from at least one of the photographs provided by the landlords this fence is actually lower in size than a hedge on one of the pads and therefore does not restrict the tenant's view from this pad anymore then the hedge does. As to the other pad I have insufficient evidence that the fence restricts the tenant's view. A view of the beach and lake would not be considered to be an essential service or facility to rent the pad; essential services would be considered to be gas, electricity and water. Therefore, I am not prepared to

order the landlords to remove the fence. However, I do suggest the landlords consult with the tenants on the beach front lots before any further cedar fences are erected and consider the open style fences instead.

With regard to the tenants' claims that the landlords have reduced the tenants' assets by the wording on the sign at the front entrance; a landlord has the right to put up any sign on his property, I am not satisfied from the evidence before me that this has devalued the tenants' assets and rather is information given to potential purchasers which a realtor should provide to any purchasers interested in purchasing property on this park. There is no provision under the *Act* for me to consider that a sign of this nature can be determined to be a restriction of a service or facility as the tenants' ability to sell their homes is not covered under the *Act*. Furthermore; I cannot Order the landlords to remove a sign as I am not able to determine that it has an effect on the tenants' right to quiet enjoyment of their rental pads under the *Act*.

With regard to the tenants' claim that WK entered the tenants' pads without notice to erect the fence; the tenants have insufficient evidence to show that the fence was erected on their pads and not Crown land and insufficient evidence to show that The landlords have entered any tenants' pads without proper notice, for any issues other than the collection or return of rent or to serve legal notices to tenants.

With regard to the tenants' claim concerning snow removal, I am satisfied that there was at least one period in 2012 where the snow was significantly deep and which was not removed. Furthermore, I am satisfied from the statements provided from all the tenants concerned in this hearing that the landlords have regularly failed to remove the snow from the roads in the park. WK has testified that he cannot remove snow less than 2 inches and I would consider this in my experience to be common practise. **I therefore order the landlords** to ensure snow clearance is carried out regularly where snow falls exceed two inches.

With regard to the tenants' claims that regular maintenance of common areas has not be carried out; I find the tenants' comments on the forms provided in evidence show that regular maintenance has not be carried out since the previous site manager passed away. However, the tenants in attendance at the hearing agree the landlords are now maintaining the park to a good standard. I am not therefore prepared to order the landlords to maintain the common areas as this is now being completed. However, I caution the landlords to ensure that this standard of maintenance is continued on the common areas of the park.

With regard to the tenants' claim for a loss of quiet enjoyment and harassment by the landlords including repeated requests for voluntary rent increases; repeated arbitrations for rent increases; serving eviction notices for frivolous reasons; actions to devalue the tenants' assets; construction of the lakefront fence; lack of snow removal; lack of proper common area maintenance; and erecting an obtrusive sign at the front entrance. I refer the parties to a similar case dealt with in the Supreme Court of Whiffin v. Glass & Glass (July 26, 1999). In this case it was held that attempts by WK to end a tenancy, if he believes he has grounds, do not constitute a breach of the covenant of quiet enjoyment of the premises. That case is the authority over this issue, and states that **as long as a landlord believes he has reason to end the tenancy**, he can make that assertion "frequently, emphatically and even rudely" and that WK is entitled to threaten proceedings in the courts for possession, even if WK is wrong. The tenants' remedy would be to dispute the Notice Ending the Tenancy once given.

Consequently, in this matter I find the landlords are entitled to threaten eviction even if they are wrong and the tenants' claims that the landlords have breached the covenant of quiet enjoyment or harassed the tenants by serving Notices to End Tenancy cannot be considered as harassment. Furthermore, a landlord is entitled to request additional rent increases either voluntary or through arbitration each year. There is no provision under the *Act* for me to issue an Order to prevent the landlords exercising their right to do so and this cannot be construed as harassment or breaching the covenant of quiet enjoyment of the rental pads.

With regard to the tenants' claims that the landlords' actions have devalued the tenants' assets, there is no provision under the *Act* for the value of the tenants' homes to be protected as they do not form part of the tenancy agreement for renting the pad from the landlords. The homes belong to the tenants and the tenants rent the pads. I am not satisfied that the fence on the lake front in front of two pads has devalued these homes particularly as WK has determined at the hearing that his intention is to try to erect an open style fence and remove the solid fence. I have already determined that the landlords are entitled to have the notice board at the front of the property and regardless of the comments from local realtors the landlords have provided evidence to show that properties on this site have continued to sell despite the Notice. I would suggest that the landlords meet with the home owners association to try to find a compromise to the wording on the notice board to include some positive comments about the site to benefit all parties including WK.

### Conclusion

I HEREBY ORDER the landlords to comply with the *Act* with regard to regular snow clearance when the snow fall exceeds two inches.

The remainder of the tenants' claim is dismissed 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 Tenancy Act*.

Dated: June 27, 2014

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Residential Tenancy Branch

