



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, FF, O

### Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order for money owed or compensation for damage or loss under the *Manufactured Home Park Tenancy Act (Act)*, regulations or tenancy agreement; an Order for the landlord to comply with the *Act*, regulations or tenancy agreement, other issues; and to recover the filing fee from the landlord for the cost of this application.

The female tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for the landlord to comply with the *Act*?
- Do the tenants have other issues?

### Background and Evidence

The parties attending agreed that this tenancy on this mobile home park started on October 11, 2010 for a month to month tenancy. The tenants pay a monthly lot rent of \$240.00 which has increased in increments from \$205.00 at the start of the tenancy.

The tenant testified that they rented a lot for their mobile home which should have been 4789.05 square feet; however, the actual size they had was only 4089.05 square feet. The tenant testified that they lost 700 square feet as the neighbours refuse to move their property and fence from the tenants' lot. The tenant testified that in July, 2013 the tenants did manage to reclaim another 300 square feet when they were able to section off the driveway with a chain link fence. The tenant testified that they are still missing 400 square feet of their lot that they have been paying rent for.

The tenant testified that they have brought this to the attention of the landlord at the beginning of their tenancy and the landlord and the tenants realtor were able to provide the tenants with documents pertaining to their lot size. The tenant testified that last year the landlord had a surveyor come to the park to determine the lot size correctly when the tenants wanted to build a fence. The landlord wrote to the tenants' neighbours last year but the landlord did not give the neighbours a time frame in which to comply and take down their fence on the tenants' lot or remove their belongings from the tenants' lot. The neighbours informed the tenants that they would take their time to comply. The tenant testified that they have written to the landlord about this matter in June, 2013 and again in July 2014.

The tenants seek compensation in the form of a rent reduction for each month from October, 2010 to July 2013 for the loss of 700.00 square feet of their lot and from August, 2013 to September 2014 for the loss of 400 square feet of their lot. The tenant refers to their original calculation of \$822.40 and as three more months have passed since filing their application the tenants seek to increase their claim to \$1,303.70.

The tenants seek an Order for the landlord to comply with the *Act* by ensuring the tenants have the correct lot size for which they pay rent. The tenant raised other issues concerning noise and dogs running in the park unleashed; however, the tenant testified that since the landlord has served the neighbouring tenants with a letter about noise things have been quieter. The tenant testified that dogs still run on to their lot and a fence would prevent this happening if the tenants can recover their lot currently being used by the neighbours.

The landlord testified that this manufactured home park was built in the 60's and was un-zoned at that time; the original owners did not have permits, plans, septic, roads or setbacks in place. The landlord testified that he purchased the park in 1974 and about six or seven years ago the City said the park had to be formalized with permits and setbacks had to be created. The landlord testified that he did receive variances from the City concerning this. The landlord testified that he had to get plans drawn up and this created problems for some tenants who had sheds on other lots. When the park was formalized the tenants that had sheds on other lots were grandfathered in and could still use that land. The tenants' neighbour is one of these tenants that are grandfathered in. They have a corner lot with additions that have not been approved and a wider home. If they park a vehicle on their driveway it is so narrow they would not be able to open their doors and would have to park outside their lot.

The landlord testified that now these tenants have bought their home they have plans that do show the neighbouring tenants are encroaching onto their lot. The tenants have not been able to work this out between them and the landlord testified that he is unsure what action he can take as the neighbouring tenant's use of these tenants's lot is grandfathered in. The landlord testified that when these tenants purchased their home and rented the lot they accepted the lot for the size it was and this problem only arose when they wanted to erect a fence so they asked for their actual lot size to be determined in 2013.

The landlord testified that the largest portion of the lot value in rent is not for the lot itself but also includes the garbage, the water, and other amenities in the park such as the roads. The landlord testified that if the neighbouring tenants were to move then the landlord would be able to move their manufactured home from the lot and redo the lot sizes. The landlord suggests that any compensation due should be a nominal amount as the landlord is trying to resolve the problems in a reasonable manner.

The tenant testified that all they want to accomplish is to get the neighbour's fence moved over, it does not have to be exactly to the lot size on the plans but the tenants do want to have full use of the lot that they are paying for.

The landlord argued that the tenant admitted that they did not know where the lot lines were when they bought the home. The landlord argued that the tenant had a plot plan but the lot lines were not marked out.

The tenant argued that they did know the lot lines right from the beginning as their realtor provided this information to the tenants.

The landlord testified that after a tenant makes a complaint about noise the landlord follows this up by seeking opinions from neighbouring tenants and then a written complaint letter is sent out. This is followed up with a second letter if the noise or other problems persist. The offending tenants are told that if problems persist then it will jeopardize their tenancy. The landlord testified that all pets in the park must be under control at all times. The landlord agreed that he does receive a few complaints about loose dogs in the park but often these are dogs that come into the park from outside for which the landlord has no control.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants' claims that they are paying rent for a lot of which the size is substantially reduced; having considered both arguments in this matter i find the neighboring tenants do appear to have been using an area of these tenants' lot. The landlord does not have an Order from the Residential Tenancy Office to allow the grandfathering in of the neighboring tenants extended lot size and the doctrine of estoppels or "grandfathering" can never interfere with the proper carrying out of the provisions of an *Act*. I therefore find that the landlord must rely on the survey report showing the lot sizes for each pad and ensure the tenants' lot for which they pay rent is provided for the tenants. I hereby Order the landlord to comply with s. 14(1) of the *Manufactured Home Park Tenancy Act (Act)* which states that a tenancy agreement may not be amended to change or remove a standard term. In essence this means the landlord may not alter the size of the lot rented by the tenants under a tenancy agreement when they purchased this mobile home.

The tenants have testified that they are paying rent for the entire lot; the landlord has testified that the value in rent is not just for the lot itself but also includes the garbage, the water, and other amenities in the park such as the roads. I find that the landlord's arguments have some merit. I also find the landlord has attempted to try to resolve the issues created in the park when the park had to be formalized in a responsible manner. I do; however, accept that the tenants' lot size has been reduced as shown in the plans provided in evidence and find that they are paying rent for a smaller lot then they should have. Taking into account the landlord's arguments that the rent is not just for the lot itself but for other amenities in the park and taking into account that the tenants only first made written complaint to the landlord in June, 2013 it is my decision that the tenants are entitled to some nominal compensation. Consequently, the tenants are entitled to compensation of \$20.00 per month from June, to September, 2014 to a total amount of **\$320.00**. I further find the tenants can continue to pay the reduced rent of \$220.00 for

the continued loss of the 400 square feet from October 2014 until such a time that their lot size is restored in accordance to the above Order or the tenancy ends.

I find the tenants are entitled to recover the filing fee of **\$50.00** pursuant to s. 65(1) of the *Act*.

### Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$370.00** pursuant to s. 60 and 65(1) of the *Act*. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced through the Provincial Court as an Order of that Court.

I ORDER the tenants to reduce rent to \$220.00 per month until the landlord provides the tenants with the lot size indicated on the survey plans.

I ORDER the landlord to provide the lot to the tenants to the size indicated on the survey plans.

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: September 12, 2014

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Residential Tenancy Branch

