



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RIVERBEND RV RESORT PARK  
and [tenant name suppressed to protect privacy]

## Decision

Codes: MNDC, FF

### Introduction:

This is an application by the tenant for a monetary order pursuant to the Manufactured Home Park Tenancy Act which was originally heard on June 16, 2014 in which the tenant requested pecuniary and non-pecuniary aggravated damages from the landlord.

### Issues to be determined

The issues to be determined at the original hearing were as follows:

Is the tenant entitled to monetary compensation in damages?

Is the tenant entitled to aggravated damages under the Act?

The tenant was successful in the application and in a decision dated June 16, 2014 was granted monetary compensation of \$8,012.78, comprised of \$2,912.78 for pecuniary losses, \$5,000.00 in aggravated damages and the \$100.00 cost of the application.

### Rehearing November 4, 2014

The monetary compensation granted at the initial hearing included an award to the tenant of \$1,000.00 for the loss of his manufactured home, which was subsequently surrendered by the tenant to a third party for storage fees.

The landlord made an application for Review Consideration of the original decision and was partly successful. In a decision dated August 25, 2014, the arbitrator granted a review hearing solely to deal with a specific portion of the tenant's claim, the remainder of the landlord's application for Review Consideration was dismissed. The only issue to be re-heard on November 4, 2014 is specified in the Review Consideration as being limited to:

***"the issue of issue of compensation for the tenant's home in the amount of \$1,000.00."***

Therefore, all of the other remaining findings and decisions respecting the numerous other matters dealt with in my decision dated June 16, 2014 will remain intact and unchanged and are recapped below.

The remaining awards of \$1,912.78 in pecuniary damages, \$5,000.00 in aggravated damages and the \$100.00 for the cost of the application are still as stated in the original decision dated June 16, 2014 and remain unchanged.

The re-hearing before me today will deal solely with the matter of the tenant's \$1,000.00 monetary claim for the loss of the manufactured home.

### **Evidence: Claim for \$1,000.00 for the Loss of the Manufactured Home**

#### **Evidence of the Tenant:**

According to the tenant, the landlord arbitrarily removed his manufactured home from the park in violation of the Act and towed it to a compound, along with its remaining contents and locked the vehicle inside a storage compound where the tenant was not able to immediately access it. The tenant pointed out that he was particularly vulnerable at this time because he was undergoing treatment for colon cancer and the sudden illegal deprivation of his home affected him financially, physically and mentally.

The tenant testified that, because of the landlord's violation of the Act, he was ultimately forced to surrender the manufactured home for the cost of the storage fees. The tenant testified that he could not afford to fund the storage as well his newly imposed living expenses, which had suddenly escalated due to the landlord's contravention of the Act.

The tenant pointed out that he had no choice but to rent new accommodation as his personal residence, costing substantially more than the current rent he had been paying for the manufactured home pad he was supposed to be occupying in the park and this placed him in a dire situation.

According to the tenant, he had no viable option but to allow an associate to take possession of his manufactured home for the accruing storage costs because if he did not act at once, he risked losing the vehicle altogether.

The tenant stated that, even if he could catch up on the storage arrears, it was not possible for him to remove the home from the storage compound as he had nowhere else to put it given that the landlord illegally deprived him of rightful possession of his site in the park. The tenant stated that it was not possible to even arrange to his home due to the circumstances. The tenant stated that he

took a loss, thereby mitigating additional losses by surrendering ownership of the vehicle for the storage costs.

The tenant's position is that he suffered the loss of his home and affordable accommodation solely due to the landlord's failure to comply with the law. The tenant is claiming compensation of \$1,000.00, which the tenant contends is a modest estimate of the actual value of the home.

In support of the amount of the claim, the tenant pointed out that the manufactured home was fully inhabitable when the landlord towed it off the site. The tenant stated that, even if the vehicle purchased by someone only for the frame and parts, as the landlord has claimed, its value still exceeds \$1,000.00.

The tenant's position is that he lost \$1,000.00, plus the storage costs because of the landlord's confiscation of his home against the tenant's will, without any legal authority or due process.

The tenant stated that, in addition to that serious transgression, the landlord stored it in a costly location that was beyond the tenant's financial ability to pay. The tenant emphasized that this course of events was triggered by the landlord's actions. The tenant pointed out that he was not in any position to prevent nor rectify what occurred and he feels that the \$1,000.00 award is warranted..

**Evidence of the Landlord:**

According to the landlord, the tenant's manufactured home was not worth the \$1,000.00 being claimed.

The landlord testified that the tenant also failed to properly mitigate his loss by trying to sell the unit and instead permitted a third party to take possession of it for \$140.00 owed in storage fees.

The landlord also stated that they are in doubt about the tenant's claim that he was incapacitated by cancer treatments at the time.

The landlord pointed out that the manufactured home was originally given to the tenant in the first place and did not cost him any money to acquire it, so, according to the landlord, the claim for \$1,000.00 is clearly not justified.

The landlord also pointed out that the tenant failed to submit sufficient evidentiary proof that the value of the home is \$1,000.00 as being claimed and therefore feels that an award against the landlord for this amount is not supported.

The landlord further pointed out that the unit is 32 years old and is therefore of little value given its age. Moreover, the landlord challenged the tenant's claim that the home was fit for habitation.

The landlord stated that the person who consented to take possession of the unit for the storage fees only agreed to take it so that the frame could be re-used since the manufacture home was virtually worthless.

The landlord's position is that the tenant's claim for \$1,000.00 compensation for the loss of his manufactured home should be dismissed.

### **Analysis Monetary Claim for the Loss of the Manufactured Home**

In regard to the tenant's claim that the landlord's violation of the Act resulted in the loss of his manufactured home, I find that section 50(2) of the Act prohibits a landlord from taking actual possession of a manufactured home site occupied by an over-holding tenant unless the landlord first obtains a valid writ of possession issued under the Supreme Court Civil Rules.

I accept that the landlord clearly violated the Act in the first place by towing the home to a storage area, without following due process that requires obtaining an order of possession and a writ of possession from the Supreme Court.

I further find that the landlord's actions in removing the home were not in compliance with section 34 of the Regulation because the tenant's property was never actually abandoned as defined by the legislation.

Therefore, I find as a fact that the landlord wrongfully confiscated the home without legal authority to do so and relocated it to a location that entailed storage costs, which the landlord unfairly delegated to the tenant.

I accept the tenant's evidence that the landlord's actions placed him in an untenable situation where he incurred higher costs for his personal lodging due to the deprivation of his pad site in the park and was also incurring additional storage costs without consent. I find that if the landlord properly followed the Act by leaving the home on the site, the problem would not have developed.

I also accept the tenant's evidence that his actions in releasing the ownership of his home constitute reasonable mitigation as required under section 7(2) of the Act. I find that, had the tenant chosen to delay matters further, the tenant's potential losses would have likely been greater, increasing as the storage fees continued to accrue and his financial stability kept deteriorating.

I find that the tenant, through no fault of his own, was unable to remove the manufactured home without paying accrued storage fees that he could not cover. On the other hand, the tenant could not leave the vehicle in the storage garage due to the escalating unpaid debt.

I accept that the tenant was not able to properly market the unit or even wait any period of time for it to sell under these circumstances. I accept that the tenant took reasonable measures to mitigate his loss and I reject the landlord's allegations to the contrary.

With respect to the genuine value of the manufactured home, I find that it was obviously fit for habitation as claimed by the tenant. This conclusion is based on the fact that the tenant actually inhabited the unit as his primary residence for quite some time, until the very moment that the landlord took action to remove the manufactured home from its site in the park. I find on a balance of probabilities that the tenant's claim for \$1,000.00 as a loss is clearly justified.

Based on the evidence, I find that the portion of the tenant's claim seeking \$1,000.00 compensation in relation to the loss of the tenant's manufactured home is supported by the facts and circumstances as proven on a balance of probabilities.

For this reason, I find that the outcome of the dispute remains the same as that given in the decision of June 16, 2014. I hereby confirm the June 16, 2014 decision and order **which are both reinstated without change**, granting the tenant monetary compensation of \$8,012.78, comprised of \$2,912.78 in pecuniary losses, \$5,000.00 in aggravated damages and a \$100.00 cost of the application. The monetary order dated June 16, 2014 is now in force.

#### Conclusion:

After a re-hearing of a portion of the original hearing at the landlord's request, the outcome remains the same as it was issued. The tenant is successful in the application and is granted a monetary order for pecuniary damages and aggravated damages.

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: November 4, 2014

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Residential Tenancy Branch

