



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SKORE HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for the Landlord to make emergency repairs to the rental site, for money owed or compensation for damage or loss under the *Manufactured Home Park Tenancy Act* (the “Act”), and to recover the filing fee for the cost of making the Application.

The Tenant appeared and provided affirmed testimony during the hearing as well as written and photographic evidence in advance of the hearing; however the photographic evidence provided was faxed by the Tenant to the Residential Tenancy Branch and was before me only in black and white.

There was no appearance by the Landlord during the 41 minute duration of the hearing and no submission of written evidence prior to the hearing. As the Landlord failed to appear for the hearing, I focused my attention to the service of the documents related to this hearing. The Tenant testified that he had served a copy of the Application, the Notice of Hearing documents and his documentary evidence by registered mail to the Landlord’s address on the tenancy agreement. The Tenant provided the Canada Post tracking receipt as evidence for this method of service.

Section 83(a) of the Act explains that a document served by registered mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failure or neglect to pick up mail and neither can this alone form the basis of a review application. Based on the deeming provisions of the Act and the undisputed evidence of the Tenant in relation to the service of the documents, I am satisfied that the Landlord was served in accordance with Section 82(1) (c) the Act.

As a result, I continued to hear the undisputed testimony and consider the Tenant’s documentary evidence as follows.

Issue(s) to be Decided

- Is the Tenant entitled to an order requiring the Landlord to make emergency repairs to the rental site?
- Is the Tenant entitled to monetary compensation due to a reduced value of the tenancy?
- Is the Tenant entitled to a reduction in his monthly rent for failure of the Landlord to do emergency repairs to the rental site?

Background and Evidence

The Tenant testified that his tenancy with the Landlord began on April 21, 2014 on a month to month basis. Although one was not provided in written evidence, the Tenant testified that a written tenancy agreement was completed and rent for the site is payable in the amount of \$560.00 on the first day of each month. The Tenant also explained that he is responsible for paying utilities for his site which includes electricity, gas and cable.

The Tenant explained that his site is located in the manufactured home park (the "Park") close to a creek which is prone to and regular floods. The Tenant submits that the Landlord has failed to maintain the underground pipework on the Park which is responsible for diverting water from the creek away from his and other sites in the Park.

The Tenant provided in written evidence several notices which he had obtained from the city. The notices are addressed to the Landlord and were issued to the Landlord during the years between 1996 and 2000 by the city. In the letters the city direct the Landlord to make repairs to the Park drainage system as it is located on private property. The letters refer to an existing culvert between several sites on the Park, including the Tenant's site, which was plugged with debris causing flooding along the access road and underneath the elevation of several sites, including the Tenant's site.

In these notices, the city refers to the drainage problem as hazardous and puts the Landlord on notice to take remedial action. The notices also detail remedial action taken by the city which was authorised by the Landlord for which the Landlord has failed to make payment for. The notices then go onto explain that the flooding problems are persistent.

The Tenant explained although he has not provided written notice to the Landlord of the problems, he has had many conversations with the Landlord about the issues, including

the Park Manager who has failed to take any action. The Tenant also testified that the Landlord has conducted several sites visits and is aware of the problem but does not want to fix it because it is too costly for them.

The Tenant testified that recently the continuing flooding caused a deep sink hole on his site which then filled with water and is now creating a long water gulley on his site. The Tenant submits that the flooding would impede the ability of emergency services to access his site in the event of a problem.

The Tenant also explained that the flooding is getting so severe that it is compromising the integrity and potential loss of his expensive manufactured home park into the sink hole as well as that of his immediate neighbours.

The Tenant explained that the gas company attended the site on November 25, 2014 as the sink hole had exposed the gas pipe on his site. After assessing the damage and surveying the risk of the gas pipe being damaged by the flooding waters, the gas company shut the gas off to the Tenant's site to mitigate any further damage or hazard that a broken gas line could create. The Tenant testified that from this date he has had no access to gas which he needs in order to have heat and hot water.

The Landlord provided photographic evidence which was in black and white before me. I asked the Landlord to describe the contents of each photograph and I was able to determine what each one was intended to depict. The photographic evidence shows the sink hole on the Tenant's site was cordoned off by the Landlord, as well as large amounts of water pooling in the immediate vicinity of the Tenant's site.

The Tenant testified that when the Landlord was told about the gas shut off, the Landlord promised some remedy in the form of heaters and hot water connection, but nothing has been provided thus far and no remedial work has taken place.

In monetary relief the Landlord seeks \$1,820.00. When the Tenant was asked how he had determined this amount, he explained that he had got the cost of a hotel for one night (\$130.00), and multiplied this by 14 days for the two weeks he has been without gas. However, the Tenant confirmed that he had not left his manufactured home and had not stayed in a hotel for this time period as he needed to be close to the hospital for medical treatment. The Tenant confirmed that he had paid November and December, 2014 rent and was seeking 60% reduced rent from the Landlord until the problem is rectified.

### Analysis

I have examined the Tenant's undisputed testimony and written evidence and make the following findings based on a balance of probabilities.

Section 27(1) of the Act defines emergency repairs as those that are urgent, necessary for the health or safety for the preservation or use of the property in the Park and includes major leaks in pipes or damaged or blocked sewer pipes.

Based on the undisputed oral, written and photographic evidence provided by the Tenant above, I find that the repairs being sought from the Landlord are indeed emergency repairs.

I am also satisfied that the Landlord is aware and has been put on notice of the drainage problem in the Park and of the impact that it is causing to the Tenant's quiet enjoyment of his site. The Tenant's historical evidence from the city also points to the fact that this issue is ongoing and the lack of action taken by the Landlord in this case is continuing to have an impact on the Tenant's rental site.

I accept that the impact on the Tenant's rental site comes mainly from: the Tenant's loss of essential services that prevent him from having heat and hot water; and that the drainage problems are compromising the safety and damage to the Tenant's manufactured home which could be impacted if the sink hole continues to worsen.

Section 26(1) of the Act requires a Landlord to provide and maintain the manufactured home park in a reasonable state of repair. In addition, Section 21(1) of the Act requires that a Landlord must not restrict an essential service to the Tenant's use of the rental site.

Based on the foregoing provisions of the Act and the undisputed testimony and written evidence of the Tenant which also includes photographic evidence, I find that the Landlord has breached the above provisions of the Act by failing to make emergency repairs to the rental site. As a result, I order the Landlord to take immediate action to complete the necessary remedial work to the Tenant's rental site.

The Tenant sought monetary relief in the amount of \$1,820.00 which related to hotel expenses which he had not incurred. Therefore, I dismiss this amount being claimed by the Tenant, but consider monetary relief for the Tenant on the basis that he has been without essential services of two weeks.

Section 58(1) (c) of the Act authorises me to make an order that any money paid by a Tenant to a Landlord must be repaid to the Tenant or must be deducted from the rent.

I find that the Tenant is entitled to the return of half a month's rent as appropriate compensation for the Landlord's failure to complete the remedial work to his site and for the loss of essential services. Therefore, the Tenant is awarded \$280.00 for the losses incurred to date. As the Tenant has paid for December, 2014 rent, The Tenant is able to obtain this relief by deducting \$280.00 from January, 2014 rent.

Section 58(1) (f) of the Act also provides me with the authority to reduce future rent paid by a Tenant to a Landlord if I determine that there has been a reduction in the value of a tenancy.

As the Landlord failed to appear for the hearing, there was no opportunity to schedule a reasonable time to discuss the completion of the remedial repair work. As this work is urgent in nature, in accordance with Section 58(1) (f) of the Act, I grant the Tenant a continuing rent abatement and I order the Tenant to reduce future monthly rent payable by 50% each month (\$280.00 each month) until such time as the repairs are completed. The Tenant should inform the Landlord of his intention to redeem this amount when making a reduced monthly rent payment.

As a result, if the Landlord has failed to complete the repair work by the end of 2014, the Tenant is entitled to pay **no** rent for January, 2015 based on his deduction for December, 2014 compensation (\$280.00) and his continuing rent abatement of 50% (another \$280.00) from January, 2015 rent.

If the Landlord completes the necessary repairs, I order that the monthly rent for this tenancy reverts to the regular amount established in this tenancy (i.e., currently \$560.00) in the month after the repairs are completed. For example, if the Landlord completes repairs by January 14, 2015 the Tenant is liable to pay the **normal** amount on February 1, 2015.

However, if the Landlord completes the above repairs and the Tenant is not satisfied and continues to withhold rent, the Landlord is required to file an Application to prove to the Residential Tenancy Branch that there has been compliance with this decision.

The Landlord is cautioned that the Tenant may apply for further monetary compensation, which may include aggravated damages.

Conclusion

The Tenant has been successful in his Application.

The Landlord is ordered to complete repairs to the rental unit as laid out above.

The Tenant is granted a deduction in rent for the amount of **\$280.00** as monetary compensation **and** a 50% rent abatement from ongoing monthly rent until the month after the above repairs have been completed.

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: December 15, 2014

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Residential Tenancy Branch

