



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This is an application for a monetary order for \$25,000.00 and a request for recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

Have the applicants established monetary claim against the respondent and if so in what amount?

### Background and Evidence

The applicants testified that:

- They had lived in their mobile home on this property for approximately 12 years when the respondent bought the property.
- On June 1, 2013 the landlord gave them a hand written 90 day notice to vacate the rental property.
- They contacted the Residential Tenancy Branch and were advised that it was an invalid notice.
- On June 10, 2013 they filed for dispute resolution and were given the hearing date of July 10, 2013.

- Notice of that hearing was sent by registered mail to the landlord on June 13, 2013.
- Prior to the hearing being held the landlord started coming onto our rental property repeatedly, and even dug up our septic system, which caused the drains in our rental unit to constantly smell like sewer.
- The landlord even took down our fence and dug up our backyard.
- In the decision from the Dispute Resolution Hearing of July 10 the Arbitrator cancel the Notice to End Tenancy stating it was an invalid notice as it was not in the proper form, issued an Order of Possession to us, the tenants, and ordered that the landlord obtain consent prior to entering our rental property.
- The landlord totally ignored the orders of the arbitrator and as a result they hired a Bailiff to try and enforce the orders, as the landlord continued to come on their property whenever he felt like it.
- As a result of the damage done to the septic system sewage was backing up into the drains and the toilet, and we lived with constant septic smell right until the end of our tenancy.
- As a result of the landlord's intrusion onto their property they were unable to continue with the welding business they have on the property and as a result had extra costs to drive to and from the area where they now had to store their work equipment.
- They had a load of gravel stored at the property which they were going to remove however the landlord plowed it under.
- We eventually moved the mobile home off the property on May 25, 2014; however when we returned to remove our lilac bushes and pick up our concrete blocks needed for blocking the trailer, the landlord had already removed them or plowed them under.
- They are therefore requesting a monetary order as follows:

12 months rent compensation as a result of section 42 Notice to End Tenancy for landlord use	\$3600.00
Load of gravel	\$400.00
Extra fuel to retrieve work materials they could no longer store on the property	\$3000.00
Replace 50 Lilac trees	\$2500.00
Replace masonry blocks	\$91.40
Bailiff Bill	\$178.50
Registered mail costs	\$13.35
Loss of use and enjoyment & loss of work	\$15,216.75
Filing fee	\$100.00

Total	\$25,100.00
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Landlord testified that:

- He did give the tenants a 90 day Notice to End Tenancy that was not in the proper form; however that Notice to End Tenancy was canceled in a previous hearing and he never gave another Notice to End Tenancy. He therefore does not believe he should have to pay the 12 months compensation as he did not evict the tenants.
- The dump truck load of gravel is still on the property and available for the tenant's pickup at any time.
- Fuel costs are just a cost of doing business and he does not believe that it is his responsibility to pay the tenants fuel costs.
- He does not believe he should have to pay for the cost of replacing lilac bushes. These lilac bushes were permanently planted on the property and it's his understanding vegetation planted on the property becomes a part of the property and the tenant should not expect to be able to remove it when they leave.
- The tenant's concrete blocks are still on the property and available for the tenant to pick up.
- The tenants did hire a Bailiff and that Bailiff mediated an agreement between the tenants and himself and he heard no further complaints from the tenants until the end of the tenancy when this application was filed.
- He also does not believe he should be paying anything to the tenants for loss of use and enjoyment because with the assistance of the Bailiff they came to an agreement with regards to the property size, and with regards to access for the landlord and the landlord's work crews and he heard no further complaints from the tenant's once that agreement was reached. He believes he complied with the agreement they reached.
- He would like it noted that the tenants have not provided any information about the mediated agreement they came to with the assistance of the bailiff.

### Analysis

I will not allow the applicants request 12 months rent compensation because although the landlord did initially give them a Notice to End Tenancy, that notice was canceled in a previous arbitration hearing and no further notice was given. Compensation is only required when the landlord has given the tenants a 12 month Notice to End Tenancy for landlord use and since that was never given the landlord is not required to pay the tenants compensation.

I will allow a portion of the claim for a the dump truck load of gravel because the landlord admits that there was a load of gravel there; however although the landlord claims it still there for the tenants to get, I accept the tenants claim that the load has been leveled out making it impossible to retrieve. The tenants however provided no independent estimates of the cost of a dumb truck load of gravel, and therefore I will only allow \$200.00 of this claim.

I will not allow the tenants claim for extra fuel costs because the tenants have provided no receipts in support of that claim to show how much they actually spent on fuel charges.

I also deny the claim for the lilac bushes. When tenant's plant shrubs or bushes on a rental property, they then become part of the property and the tenants do not have the right to remove them at the end of the tenancy.

I will however allow the claim for the masonry blocks as I also accept the tenants claim that the landlord bulldoze them into the ground and therefore they would be impossible to retrieve.

I also allow the claim for the bailiff costs because the landlord failed to comply with the previous order issued in a previous dispute resolution hearing and as a result the tenants were required to hire a Bailiff to resolve the issue.

I deny the claim for the registered mail receipt, as this is a receipt for documents required from the previous dispute resolution hearing and therefore considered costs of that dispute and I have no authority to award costs.

It is my decision that I will allow in of the claim for loss of use and enjoyment and for aggravated damages. It's obvious from the evidence presented that the tenants had a substantial loss of use and enjoyment of this rental property as a result of the landlord's actions. The landlord took it upon himself to bring large equipment onto the rental property and to do substantial damage to the rental property without having the legal authority to do so. As a result of the landlord's actions the tenants had to suffer from ongoing septic problems and smells, and from constant interference by large equipment parked on or near the property.

It's my finding that there was an ongoing unreasonable interference by the landlord that resulted in a very stressful situation for the tenant's from the time the landlord purchased the property until the tenants eventually vacated the rental property.

The landlord claims that he complied with a settlement agreed to with the assistance of the bailiff, however I do not accept the landlords claim and I believe that the landlord came on to the property whenever he felt like it, without having reasonable grounds to do so.

It is my decision therefore that the landlord must pay the tenants \$5000.00 for loss of use and enjoyment and \$5000.00 for aggravated damages for a total of \$10,000.00.

I will not allow any claim for loss of work as the applicant/tenants have provided no evidence in support of their claim that they lost a significant amount of work.

I will allow the request for recovery of the \$100.00 filing fee.

Therefore the total amount of the claim that I have allowed is as follows:

Gravel costs	\$200.00
Masonry blocks	\$91.40
Bailiff fees	\$178.50
Loss of use and enjoyment and aggravated damages	\$10,000.00
Filing fee	\$100.00
Total	\$10,569.90

### Conclusion

I have allowed \$10,569.90 of the applicants claim and have issued an order for the landlord to pay that amount to the applicants. The remainder of this 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: January 15, 2015

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Residential Tenancy Branch

