



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vista Village Trailer Park  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNDC; OLC; FF

### **Introduction**

This is the Tenants' application for compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order that the Landlord comply with the Act, Regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenants served the Landlord with the Notice of Hearing documents and copies of their documentary evidence by registered mail sent February 3, 2015. It was also determined that the Landlord served the Tenants with copies of its documentary evidence by registered mail sent February 22, 2015.

### **Issues to be Decided**

- Are the Tenants entitled to compensation pursuant to the provisions of Section 60 of the Act?
- Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?

### **Background and Evidence**

Copies of the tenancy agreement and the park rules were provided in evidence. This tenancy began on November 12, 2011. Rent is due on the first day of each month. Monthly rent to December, 2014, was \$475.00. The current monthly rent is \$488.00, effective January 1, 2015.

The Tenants gave the following testimony:

The Tenants submitted that the Landlord's agent LW is disrupting the Tenants' quiet enjoyment by issuing eviction notices which are invalid; issuing warnings about illegal parking which are not true; and issuing warning letters about late payments of rent when rent is paid on time.

The Tenants stated that in a six month period they were served with two Notices to End Tenancy both of which were found to be invalid by arbitrators. Copies of the Decisions in this regard were provided in evidence.

The Tenants testified that the Landlord's agent receives rent on time, but does not cash the cheques until after rent is due. The Tenants stated that the Landlord ignored a previous arbitrator's decision that July 2014's rent was not late and charged "late fees" for July, 2014. The Tenants stated that the Landlord applied subsequent rent payments towards previous months' "late fees", thereby compounding its error and giving the appearance that rent was late for August, October and November, 2014. The Tenants testified that the Landlord also alleges that December 2014's rent was late when it was received by the Landlord when it was due. The Tenants stated that they sent December's rent by registered mail on November 24, 2014, and that it was delivered on November 27, 2014. The Tenants provided a copy of the registered mail receipt and Canada Post tracking information in evidence.

The Tenants submitted that the Landlord was attempting to create cause to end the tenancy for repeated late payment of rent. The Tenants testified that in a letter dated January 10, 2015, LW states, "Due to past late fees you are still in arrears of **\$79.00**" [my emphasis added]. The Tenants testified that they paid January rent minus \$100.00, which was awarded to the Tenants in the two previous Decisions for recovery of their filing fees. The Tenants provided a copy of the letter and a "Customer Balance Detail" dated January 10, 2015; and a copy of a Warning Letter dated December 10, 2014, in evidence.

The Tenants stated that on December 2, 2014, the Landlord provided a warning letter to the Tenants, in which the Landlord alleges that the Tenants are in arrears of **\$74.00**. The letter further alleges that the Tenants parked their car on the street, in violation of the tenancy agreement, local bylaws, and park rules, which obstructed the snow plough from clearing the snow. A copy of the letter was provided in evidence. The Tenants testified that the car was in the repair shop from November 8, 2014 to February 20, 2015, and therefore could not have been in the way of the snow plough. The Tenants provided a copy of a letter from the mechanic who worked on the car in evidence.

The Tenants testified that they were awarded recovery of their filing fees against the Landlord for the two previous hearings, in the total amount of \$100.00. They stated that they deducted \$100.00 from rent that was due in January, 2015, but that the Landlord took a portion of it (\$74.00) off the supposed "late fees" instead. The Tenants are concerned that February's rent will be considered by the Landlord to be "late" as well.

The Tenants stated that this is a pattern that has occurred with some of the Landlord's other tenants, where eviction notices have been found to be invalid. The Tenants provided copies of other decisions in evidence and made reference to two other decisions during the Hearing. The Tenants suggested that the Landlord may have ulterior motives in ending tenancies within the manufactured home park. The Tenants testified that the lots at the manufactured home park are "double lots" and that the Landlord's agent has been seen measuring the lots. The Tenants suggested that the Landlord wishes to evict tenants so that it can divide the lots and therefore make more money on rent. The Tenants stated that the subject manufactured home park is situated in an area where rent has increased substantially due to economic reasons.

The Tenants testified that this is very stressful because the Tenants never know when the next letter or notice will come. The Tenants stated that they are under constant fear of eviction. The Tenants seek an Order that rent for July, 2014 – March, 2015 was paid when it was due.

The Tenants referred to a decision with respect to the Landlord and another tenant, wherein that tenant was awarded \$1,000.00 for breach of quiet enjoyment. The Tenants seek a monetary award against the Landlord for each breach of their quiet enjoyment, calculated as follows:

Loss of quiet enjoyment for "stating July's rent was late"	\$1,000.00
Loss of quiet enjoyment for "stating December's rent was late"	\$1,000.00
Loss of quiet enjoyment for "carrying over non-existent late" fees	\$1,000.00
Loss of quiet enjoyment for warning letter regarding parking	\$1,000.00
Return of \$74.00 which was "deducted from previous awards"	<u>\$74.00</u>
<b>TOTAL</b>	<b>\$4,074.00</b>

The Landlord's agents and counsel gave the following testimony and submissions:

The Landlord's agent LW testified that there was "confusion" regarding July's late fees. She stated that the decision that July's rent was not late was not made until September 22, 2014. LW stated that the Landlord's bookkeeping system applies late fees first before rent payments and therefore there was a "cascading effect" causing subsequent late fees to be charged. LW acknowledged that the late fee for July, 2014, should have

been expunged. The Landlord provided a statement entitled "All Transactions" up to February 2015. LW stated that the Landlord "did not act on the late fees" and that there are currently no outstanding late fees or arrears, contrary to the Landlord's statement entitled "All Transactions".

LW stated that the Tenants have two vehicles, a pick-up and a Blazer, and that one of the vehicles was parked on the street. The Landlord's agent AB stated that he clears snow from the roads in the manufactured home park with a front end 4 x 4 loader. He stated that vehicles must be inside the fence from October to March every year to allow room for snow removal. AB testified that during the day, the Tenants parked their vehicle between the fence and the road, in contravention of the park rules and bylaws. AB was not certain which of the Tenants' two vehicles was parked outside the fence.

LW denied that there was any ulterior motive for the warning letters. She stated that currently the manufactured home park is only half full and it doesn't make sense to evict a paying tenant.

The Landlord's legal counsel submitted that the Tenants have not satisfied the burden of proof with respect to ulterior motive, loss of quiet enjoyment, or the value of such a loss. He submitted that decisions must be based on the merits of each individual case and not on precedent. The Landlord's legal counsel submitted that the Tenants' Application should be dismissed.

### **Analysis**

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

I am not surprised that there was "confusion" with respect to late fees. The Landlord's letter dated December 2, 2014, provides that the Tenants were in arrears in the amount of \$74.00, "Please be advised that you are in arrears due to late fees of \$74.00 so take that off the \$100 hearing fees for a balance of \$26.00"; however, the Landlord's letter dated January 10, 2015, indicates that the Tenants were in arrears of \$79.00. The Tenants testified that they deducted their \$100.00 award from January's rent (thereby paying \$388.00), but the Landlord's document entitled "All Transactions" indicates that the Tenants paid \$408.00 for January's rent.

The Landlord's document entitled "All Transactions" provides, in part:

Type	Date	Amount	Balance
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Invoice	06-01-2014	475.00	474.00
Payment	06-01-2014	-475.00	-1.00
Invoice	07-01-2014	475.00	474.00
Invoice [late fee]	07-15-2014	25.00	499.00
Payment	07-31-2014	-475.00	24.00
Invoice	08-01-2014	475.00	499.00
Invoice [late fee]	08-15-2014	25.00	524.00
Invoice	09-01-2014	475.00	999.00
Payment	09-02-2014	-475.00	524.00
Payment	09-02-2014	-475.00	49.00
Payment	09-26-2014	-475.00	-426.00
Invoice	10-01-2014	475.00	49.00
Invoice [late fee]	10-07-2014	25.00	74.00
Payment	10-28-2014	-475.00	-401.00
Invoice	11-01-2014	475.00	74.00
Invoice [late fee]	11-07-2014	25.00	99.00
Invoice	12-01-2014	475.00	574.00
Payment	12-03-2014	-475.00	99.00
Credit Memo	12-31-2014	-100.00	-1.00
Invoice	01-01-2015	488.00	487.00
Payment	01-02-2015	-408.00	79.00
Invoice	02-01-2015	488.00	567.00
Payment	02-01-2015	-488.00	99.00
TOTAL			99.00

LW acknowledged that the Tenants owe no rent or late fees. Based on the evidence of both parties, I find that the Landlord owes the Tenants the amount of **\$21.00**, calculated as follows:

Rent	Amount	Balance
June, 2014	\$475.00	\$474.00
Payment	-\$475.00	-\$1.00
July, 2014	\$475.00	\$474.00
Payment	-\$475.00	-\$1.00
August, 2014	\$475.00	\$474.00
Payment	-\$475.00	-\$1.00
September, 2014	\$475.00	\$474.00
Payment	-\$475.00	-\$1.00
October, 2014	\$475.00	\$474.00
Payment	-\$475.00	-1.00

November, 2014	\$475.00	\$474.00
Payment	-\$475.00	-\$1.00
December, 2014	475.00	\$474.00
Payment	-\$475.00	-\$1.00
January, 2015	\$488.00	\$487.00
Payment	-\$408.00	\$79.00
Recovery of Tenants' filing fees	-\$100.00	-21.00
February, 2015	\$488.00	\$467.00
Payment	-\$488.00	-\$21.00
<b>TOTAL DUE TO TENANTS</b>		<b>\$21.00</b>

The Tenants seek compensation under Section 22(b) of the Act which provides that tenants are entitled to quiet enjoyment including freedom from unreasonable disturbance. Considering the totality of the Tenants' evidence, I find that the Tenants have submitted sufficient evidence that the Landlord has not complied with Section 22(b) of the Act for the following reasons:

- The decision dated September 22, 2014, indicates clearly that rent was not late for the month of July, 2014; however, the Landlord continued to provide warning letters based on rent being late for July, 2014. The Landlord's own evidence (pages 18 and 19), which is the document entitled "All Transactions", indicates that the Landlord submitted that the Tenants were \$99.00 in arrears as late as February 1, 2015.
- LW testified that the Landlord did not "act on the late fees", yet she issued the warning letter on December 10, 2014 (page 17 of the Tenants' evidence) and gave the Tenant another letter of January 10, 2015, indicating that, "Due to past late fees you are still in arrears of \$79.00".
- I accept the Tenant's evidence that December rent was received by the Landlord on November 27, 2014, yet the Landlord's document entitled "All Transactions" indicates that it was not received until December 3, 2014.
- LW also issued a warning letter on December 2, 2014, which states in part, "Your car is in the way of the snow plow. You must park in your driveway." I find that the Landlord did not provide sufficient evidence that the Tenants had parked one of their cars illegally on the manufactured home site. The warning letter was written on December 2, 2014, but AB did not recall which car was parked illegally or on what day(s). I accept the Tenants' evidence that one of their vehicles was in the shop getting engine repairs from November 8, 2014 until February 20, 2015, and that their other vehicle was not parked in front of the fence.

Section 60 of the Act provides that if damage or loss results from a party failing to comply with the Act, regulation or tenancy agreement, I may determine the amount of, and order that party to pay, compensation to the other party. I find that the amount that the Tenants are seeking is excessive and that they are entitled to compensation in the amount equivalent to one month's rent, **\$488.00**, for the Landlord's failure to comply with Section 22(b) of the Act. **I Order that the Landlord comply with Section 22 of the Act and caution the Landlord that further unsubstantiated or invalid warning letters or notices to end tenancy may result in further compensation to the Tenants.**

I find that the **Tenants do not owe any rent to and including March, 2015 rent. I further find that the Tenants were not in arrears of rent for the period between July 1, 2014 and February 1, 2015, and therefore the Tenants owed no late fees for that period of time.**

The Tenants' application had merit and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

### **Conclusion**

The Tenants have established a total monetary award of **\$559.00**, which may be deducted from future rent due to the Landlord, pursuant to the provisions of Section 65(2) of the Act.

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: April 09, 2015

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Residential Tenancy Branch

