



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1027110 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

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### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking access to either common area or the tenant's home site to effect repairs required for the safety of all residents of the manufactured home park.

The hearing was conducted via teleconference and was attended by the landlord's agent; legal counsel; the tenant and his advocate.

At the outset of the hearing the tenant CS noted that the landlord had misspelled the tenant TS's first and last names. I corrected the spelling as noted above.

Additionally the tenant indicated that the landlord had not named or served two other tenants. The tenant went on to explain that he and the other named tenant are in a "rent to own" arrangement with the other parties, for the purchase of the manufactured home. The tenant testified that the previous owner had assessed these parties and they were allowed to live in the park. The tenant confirmed that either he or the other named tenant have and continue to pay the rent for this pad.

However, the tenant could not provide confirmation or any documentary evidence that the tenancy between the named tenants and the landlord had been assigned to the unnamed parties. As such and because the named tenants continue to pay the pad rent to the landlord, I find that the tenancy relationship is between the applicant landlord and the named respondent tenants. I find that the other parties have a relationship with the tenants only and not with the landlord.

As such, I find the other parties are not a party to this dispute and there is no requirement for the landlord to name or serve the other parties with anything related to this Application for Dispute Resolution.

While part of the landlord's Application is to seek clarity in determining whether the area the landlord seeks access to is common area or the tenant's home site I find that sufficient evidence was not provided by either party to determine what the original terms of the tenancy agreement are or how the site is defined.

I also note that regardless of whether or not the area is common area or the tenant's home site is not relevant to the determination of whether or not the landlord can obtain access to the area required to make the required repairs.

As such, on the issue of defining the tenant's home site vs. common area I make no finding of fact or law. I do note however that should the issue become relevant for any other matters related to this tenancy both parties should attempt to come to some agreement as to the specific pad boundaries and failing that both parties remain at liberty to file a new and separate Application for Dispute Resolution.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order allowing access to any common area and the tenants' home site to complete park repairs, pursuant to Sections 23, 26, and 27 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submits that on or about February 28, 2015 ownership of the manufactured home park transferred from the previous owner to this landlord. He had been made aware of a flooding problem in the park and immediately set about to find out what work needed to be done to eliminate or at least limit the flooding to prevent danger to residents' personal property and their health and safety.

The landlord submits that by March 3, 2015 he had received emergency approval from the federal Department of Fisheries and Oceans (DFO) to go ahead with the work that was determined as necessary by the consultants he hired to determine the problem and recommendation of a solution. The landlord submits the consultants have identified that a culvert that runs behind this pad site has collapsed and requires replacement.

Subsequent to this the landlord was also informed that a tenant in a neighbouring pad had obtained an order dated February 11, 2015 against the previous landlord (now transferred to the current owner) to complete a number of specific repairs with specified completion dates that are related to the flooding issues in the park.

The landlord submits that instead of putting anything in writing he wanted to work closely with affected tenants and attempted to inform the tenants from this pad that he would be completing this work and that in order to do so he would require the tenant to move some vehicles and a wood pile. The landlord submits that the tenant has refused access unless the landlord purchases the manufactured home for \$30,000.00.

The tenant submits that he will not allow the landlord access because the landlord has not informed him of what work will be done or how the work will address specific problems with his pad site; the landlord will not inform the tenant of who he has hired to complete the work; and the landlord has offered no compensation to the tenant for having to moving any of these items or for the damage to the wood pile resulting from previous flooding.

The tenant also submits that he does not believe the landlord has all the necessary permits to complete the work. He also states that the DFO does not allow any work to be completed on streams until August 15 each year due to fish population migrations. The landlord submits his emergency approval does not restrict the time when work can begin.

### Analysis

Section 26(1) of the *Act* states a landlord must provide and maintain the manufactured home park in a reasonable state of repair, and comply with housing, health and safety standards required by law. Section 26(6) states a landlord's obligations apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 27(1) of the *Act* defines "emergency repairs" means repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of property in the manufactured home park, and made for the purpose of repairing major leaks in pipes, damaged or blocked water or sewer pipes, the electrical systems, or in prescribed circumstances, the manufactured home site or the manufactured home park.

Based on the landlord's documentary evidence I am satisfied that the landlord is attempting to make repairs to the park that are in line with both his obligations under Section 26 and 27 of the *Act*.

From the evidence and testimony of both parties, I find that the tenant is interfering with the landlord's attempts to fulfil his obligations under the above noted Sections by not allowing the landlord access to the pad site and the removal of obstacles that prevent the landlord from completing the work.

I note that, while it may be a good business practice, there is no requirement under the *Act* that a landlord must inform a tenant of any details about the repairs to be made; who is going to make them; or whether or not all necessary permits and approvals have been obtained by the landlord.

I also note that there is no requirement under the *Act* that specifically requires a landlord to provide a tenant with any compensation to have the tenant prepare the site in manner that would allow the landlord to complete the required repairs. However, if a landlord does not offer any compensation and tenants believe that they have suffered damage or loss as a result of a landlord's actions a tenant may file an Application for Dispute Resolution seeking compensation.

Section 23 of the *Act* states a landlord must not enter a manufactured home site that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) The tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) At least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) The purpose for entering, which must be reasonable;
  - (ii) The date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) The landlord has an order of the director authorizing the entry;
- (d) The tenant has abandoned the site;
- (e) An emergency exists and the entry is necessary to protect life or property;
- (f) The entry is for the purpose of collecting rent or giving or serving a document that under this *Act* must be given or served.

While I accept that there is some urgency to the completion of this work, I am not satisfied that the access to the property would be based on the above noted subsection that an emergency exists and the entry is necessary to protect life and property.

### Conclusion

Based on the above, I order that the tenant prepare the pad site in such a manner that will allow the landlord unfettered access to complete work required to prevent and/or minimize flooding of the manufactured home park and any subsequent stabilization work that may be required. This includes removing any vehicles and wood piles or any other items blocking access.

The landlord has agreed to allow the tenant up to 2 weeks to prepare the site and I find that this is a more than reasonable time frame to do so. I also note the landlord has offered that he will provide a location for the tenant to relocate these items while the repairs are being made. As such, I order that the tenant must prepare the site as described above no later than 2 weeks after receipt of this decision.

Based on the testimony of both parties I also order that the landlord may access the manufactured home site in accordance with Section 23 subject to the following provisions:

1. The landlord provide 24 hour written notice, served in accordance with Section 81 and the deeming provisions of Section 83 of the *Act* to the tenant to access the site for any preliminary inspections;
2. The landlord provide 24 hour written notice, served in accordance with Section 81 and the deeming provisions of Section 83 of the *Act* to the tenant to access the site to begin the necessary repairs; and
3. If the work is not going to be completed in 1 day the landlord must provide the tenant with a tentative schedule of the entire repair project and immediate updates only if the schedule is going to be changed. The landlord is not required to issue a 24 hour written notice for the scheduled days and the immediate updates will act as the required notice of any changes to the schedule. The landlord may choose to provide regular updates of the project and/or schedule even if no changes to the schedule will occur.

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 16, 2015

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Residential Tenancy Branch

