Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC PSF RR FF

Introduction

This proceeding was convened under the *Manufactured Home Park Tenancy Act,* hereinafter referred to as the *Act,* which at section 77.1(1) provides for exclusive jurisdiction in determining disputes relating to manufactured home park tenancy matters.

The hearing was conducted via teleconference and commenced on January 30, 2015, for 31 minutes and on April 24, 2015 for 4 hours and 19 minutes to hear matters pertaining to the Tenants' application for Dispute Resolution. The Tenants sought a Monetary Order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; Orders to have the Landlord comply with the *Act*, regulation or tenancy agreement; the provision of services or facilities required by law; to allow the Tenants reduced rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord for this application.

The named respondent Landlord is a limited company, hereinafter referred to as the Corporate Landlord. The Corporate Landlord's agent, E.M., hereinafter referred to as Landlord, and both Tenants were in attendance at the January 30, 2015 session. Both Tenants, the Landlord, one of the corporate Landlord's shareholders, B.O., hereinafter referred to as either the Owner, and the corporate Landlord's legal counsel, hereinafter referred to as Counsel, were in attendance at the April 24, 2015 session. Each person who submitted evidence provided affirmed testimony during the April 24, 2015 session.

References made to a person listed as B.O. refer to the maintenance manager, whose name is listed at the bottom of the first page of this Decision. It should be noted that B.O. was not in attendance during this proceeding.

Section 1 of the *Act* defines a **landlord** in relation to a manufactured home site to include any of the following:

> *(a) the owner of the manufactured home site, the owner's agent or another person who, on behalf of the landlord, permits occupation of the manufactured home site under a tenancy agreement;*
>
> *(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*

> *(c) a person, other than a tenant whose manufactured home occupies the manufactured home site, who*
>
> > *(i) is entitled to possession of the manufactured home site, and*
> >
> > *(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the manufactured home site;*
>
> *(d) a former landlord, when the context requires this*

As indicated above, the Corporate Landlord was represented by their agent (Landlord), and a shareholder (Owner), all of whom meet the definition of landlord as provided for in the *Act*. Therefore, for the remainder of this decision, terms or references to the Landlord importing the plural shall include the singular and vice versa, except where the context indicates otherwise.

Preliminary Matters

Several procedural and/or preliminary issues were raised after the January 30, 2015, proceeding. For clarity and to separate the procedural and preliminary issues from the issues relevant to the Tenants' application for Dispute Resolution, I have listed those issues here.

Relevant sections of the *Manufactured Home Park Tenancy Act* (the *Act)*, Regulations, Rules of Procedure, Policy Guidelines, and/or RTB Fact Sheets are listed if considered in this matter. The relevant sections of the official transcript are also listed below and are identified by the abbreviation TS for transcript and page numbers and line numbers and document such as *[TS p 92 lines 2-22].* Excerpts from the Tenants' evidence are referenced as WS for written submission and Ex for exhibits.

During the January 30, 2015 proceeding the Landlord introduced herself as agent for the Corporate Landlord and acknowledged receipt of the Tenants' application, the hearing documents and the Tenants' evidence. I heard arguments from the Landlord and the Tenants pertaining to the Landlord's request for an adjournment. The adjournment was granted, oral and written Orders were issued, and a written Interim Decision was issued.

On March 12, 2015 written submissions regarding preliminary issues were submitted by Counsel. A second interim Decision was issued March 26, 2015, granting Counsel's request to have the reconvened hearing recorded and transcribed and to have summonses issued to the Owner and B.M.

Accordingly, the January 30, 2015 and March 26, 2015, Interim Decisions must be read in conjunction with this Decision.

Orders were issued to the Landlord in the March 26, 2015 Interim Decision to submit a copy of the official recording and transcript of the April 24, 2015 proceeding, no later than May 12, 2015. As per my instructions during the April 24, 2015 proceeding the 30 day time period in which the director's decision is required to be given will begin upon receipt of the official transcript. [TS p 11 lines 21 – 24]

On May 11, 2015 the RTB received notification from Counsel that he had been informed that the official transcript had been delayed in the transcriber's quality assurance department. The certified transcript was received at the RTB on May 13, 2015, along with a letter issued by Counsel and the transcription company indicating that the audio recording would not be provided as it is the transcription company's procedure to hold the audio recording as backup for the reporter.

After consideration of the foregoing, I note that the certified transcript arrived at the RTB one day later than had been originally ordered. The transcript was 177 pages long and after considering the work involved to prepare, review and certify the document, I am satisfied that the submission of the certified transcript was completed in a reasonable amount of time. I accept that the official transcript is an accurate accounting of the April 24, 2015 proceeding; therefore, I do not find it necessary for a copy of the audio recording to be submitted, as previously ordered.

The director has delegated authority to me as Arbitrator to determine disputes pursuant to the *Manufactured Home Park Tenancy Act* section 9.1(1) and the *Residential Tenancy Act* section 9.1(1). Although I made mention of the *Residential Tenancy Act* during the April 24, 2015 hearing, [TS p 11 lines 17 and 24], all parties were made aware that these matters were being heard pursuant to the *Manufactured Home Park Tenancy Act,* as indicated on the Tenants' application for dispute resolution, my Interim Decisions, and as clarified by me during the April 24, 2015 hearing [TS p 17 line 24].

As indicated above, the hearing was conducted via teleconference. Teleconferences involving numerous parties calling from different locations and using different technology such as landlines and cellphones may create situations where there is the presence of static or feedback noises, which can at times interfere with the ability to hear what is being said.

During the April 24, 2015, session, there was the presence of feedback noises which was interfering with the ability to hear everything clearly. As a result, during those periods of background noises or feedback noises, I managed the hearing through the teleconference software by placing telephone lines on mute for those participants who were not speaking at the time. I confirmed that those parties were able to hear what was being said while their phones were muted, and took care in muting and unmuting telephone lines when the situation provided for no interruption. These situations are identified throughout the transcript as being spoken by THE OPERATOR.

Section 9(3) of the *Act* provides that the director may establish and publish rules of procedure for the conduct of proceedings under Part 6 [*Resolving Disputes].*

Section 68 of the *Act* states that the director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be necessary, appropriate and relevant to the dispute resolution proceeding.

The Rules of Procedure defines evidence as any type of proof presented by the parties at a dispute resolution proceeding in support of the case, including, but not limited to: written documents, such as the tenancy agreement, letters, printed copies of emails, receipts, pictures and the sworn or unsworn statements of the witnesses; photographs, video recordings, audio recordings; oral statements of the parties or witnesses given under oath or affirmation.

The Notice of a Dispute Resolution Hearing document lists the date and time of the hearing, telephone number and access code to dial into the teleconference hearing, and GENERAL INFORMATION about the participants responsibility which states at # 1:

> *Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch* ***before*** *the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*
>
> [My emphasis added by bolding.]

Rule of Procedure 3.12 stipulates that an Arbitrator may refuse to accept evidence if the Arbitrator determines that there has been a willful or recurring failure to comply with the *Act*, Rules of Procedure or Order made through the dispute resolution process, or if, for some other reason, the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice.

In my January 30, 2015, Interim Decision, (p 4 par 2 to 4) I listed the Rules of Procedure 3.15 and 3.19, regarding additional submissions of evidence from the applicant and the respondent. Orders were issued orally in the January 30, 2015 session of this proceeding, which were written in the Interim Decision as follows:

> *In consideration of granting the Owner's adjournment request, I advised the parties that I may consider amending the Tenants' application, pursuant to section 57 of the Act. As such I issued an oral Order that the Tenants were to submit additional evidence to the RTB and the Landlord consisting of evidence relating to any additional expenses incurred due to the adjournment being granted. The Tenants' evidence must be received by the RTB and the Landlord no later February 28, 2015. The Landlord and Owners are provided the opportunity to provide evidence in response to the additional evidence which is specific only to the evidence relating to the additional costs, no later than March 15, 2015.* ***No other documentary evidence will be considered from either party.***

Rule of Procedure 3.17 states that the Arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established in the Rules of Procedure provided that the acceptance of late evidence does not unreasonably prejudice one party.

There was evidence before me that this corporate Landlord, Landlord, and Counsel had all been involved in dispute resolution proceedings heard by the RTB on at least five previous occasions, in addition to a recent Judicial Review Proceeding. In each case the Landlords were provided with copies of the applications for Dispute Resolution, the Notice of Hearing documents, and Fact Sheets issued by the RTB with all hearing packages.

There was further evidence that the Landlord had a history of delaying proceedings held by the RTB on the grounds they wished to have the owner attend the hearing and when those hearings were reconvened the owner was not present. Rather, Counsel had been brought on after the proceedings had convened, to represent the Owner / Corporate Landlord and the Owner was not made available to be questioned or cross examined.

The RTB F*act* Sheet RTB114 titled The Dispute Resolution Process is included in all hearing packages and includes the following (end of page 4 top of page 5)

> *Parties may have agents or lawyers to represent them or advocates to assist them.*
>
> *If you are represented by an advocate or agent, or require an assistant or translator, you must ensure they are available for the date and time of the dispute resolution hearing. The arbitrator will not necessarily adjourn the hearing if your representative or translator is not in attendance.*

In this case the Landlord appeared at the January 30, 2015 hearing and stated that legal counsel was not in attendance because “she did not request their presence”. She further submitted that the adjournment should be granted because she could not provide evidence regarding any matters relating to the Tenants’ application, other than to say her actions were as per direction from the owners.

Despite the Landlord’s insistence on January 30, 2015, that she could not provide evidence in this matter, she appeared at the reconvened hearing on April 24, 2015, and provided a substantial amount of evidence. In her own words, the Landlord described her involvement managing the Park as her conducting the majority of the Park business and the Owner being involved in only 10% of the business [TS p134 line 18].

There was also evidence that the Landlord’s level of authority was not limited to clerical or administrative work, as Counsel submitted evidence that the Landlord was an authorized signatory of the corporation in retaining the services of Counsel since October 30, 2013.

It must be clarified that the lawyer who submitted the request for adjournments prior to the January 30, 2015, hearing, was identified by the Landlord as being their corporate lawyer who handled the corporate matters such as listing the address of their law office as the Corporation's address in the corporate registry. The Landlord confirmed that she had both called and emailed Counsel to discuss him representing the corporate Landlord in this matter because Counsel "deals with our tenant stuff" [TS pgs 155 – 156 lines 7 – 25 and 1 – 9]. The Landlord later clarified that she did not send the email request for Counsel to represent the corporate Landlord in this matter until February 24, 2015 [TS p 157 line 1].

There was undeniable evidence the Landlord made no attempt to have legal counsel represent the corporate Landlord at the scheduled January 30, 2015 hearing. Rather the submission from the Landlord was that the action she took was to request the services of their corporate lawyer to write a request for adjournment. I find the Landlords' action to seek assistance from their corporate lawyer instead of Counsel, who dealt with their "tenant stuff", to be presumptuously suspicious of someone intentionally trying to delay this matter from being heard.

On March 12, 2015, Counsel submitted a letter to the RTB advising the following: they were assuming conduct of this matter; the Corporate Landlord had sold the Park in early March 2015; requesting permission to have an official court reporter record and transcribe the reconvened hearing; and requesting summonses to be issued.

As indicated in the Interim Decision of January 30, 2015, the adjournment was granted under specific conditions to allow the appearance of the Owner and B.M., another Landlord, and Orders were issued regarding attendance and evidence submissions, in accordance with the *Act* and the Rules of Procedure.

Despite my January 30, 2015 Orders that no additional evidence would be accepted, unless specifically ordered, both Counsel and the Tenants made additional submissions of evidence. After his initial correspondence on March 12, 2015, which referenced my Interim Decision, and prior to the April 24, 2015 reconvening of this matter, Counsel submitted six additional packages or volumes of evidence, only one of which was requested by me. On March 31, 2015 the Tenants made one additional submission of evidence to the RTB, which was not requested.

It is undeniable that each party to this dispute had previous experiences with the RTB dispute process and that they were well informed of the deadlines for evidence submissions. Therefore, in consideration of the Landlord`s conscious decision not to have legal representation prepare for or attend at the January 30, 2015 hearing and her refusal to submit evidence during that session, I conclude that it would be prejudicial to the Tenants to accept the Landlords' late documentary evidence submissions; especially in this case when Orders were issued specifically prohibiting additional evidence submissions.

Accordingly, all written submissions and/or documentary evidence received from either party after January 30, 2015, which were not specifically requested by me and did not deal with the procedural issues of attendance or recording of the April 24, 2015 proceeding, will not be considered in my Decision, pursuant to Rule of Procedure 3.17. That being said, each party was provided a full opportunity to: present their evidence and legal arguments; cross examine each witness; and provide final summations through oral submissions during the April 24, 2015 proceeding.

Section 84 of the *Act* states that except as modified or varied under this *Act*, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that administrative tribunals are designed to be less formal, less expensive, and a faster way to resolve disputes than by using the traditional court system. In addition, arbitrators who make decisions as tribunal members usually have specialized knowledge about the topic they are asked to consider and are therefore afforded deference in making their decisions.

Rule of Procedure 12.3 provides that the arbitrator may ask questions of a party or witness if necessary: to determine the relevancy or sufficiency of evidence; or to assist the arbitrator in reaching a decision.

As indicated above, and notwithstanding Counsel's submission that this is to be an adversarial process, the RTB dispute resolution process provides for a less formal process, whereby arbitrators ask questions and instruct participants in the presentation of their evidence, as participants to these types of proceedings normally represent themselves, as was the case with the Tenants in this matter.

Section 69 of the *Act* stipulates as follows:

> *(1)(a) On the request of a party or* ***on the director's own initiative****, the director may issue a summons requiring a person to attend a hearing under this Division and give evidence.*
>
> *(2) A* ***party who requests that a summons be issued*** *under subsection (1) must provide conduct money for the witness in accordance with the rules of procedure established under section 9 (3)* [director's powers and duties]*.*
>
> *(3) If a person named in and served with a summons under subsection (1) does not comply with the summons, the person is liable, on application to the Supreme Court, to be committed for contempt as if in breach of a judgment or an order of the Supreme Court.*
>
> [My emphasis added by bolding.]

Section 82(1) of the *Act* provides special rules for service of certain documents as follows:

> *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 6, when required to be given to one party by another, must be given in one of the following ways:*
>
> > *(a) by leaving a copy with the person;*
> >
> > *(b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
> >
> > *(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
> >
> > *(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
> >
> > *(e) as ordered by the director under section 64 (1) [director's orders: delivery and service of documents]*.

The request for adjournment dated January 8, 2015, received from the corporate Landlord's lawyer, C.G.R., included the following as reasons for the request for adjournment: "[O*wner's name*], the individual connected with the landlord whose participation will be needed at the hearings, is presently out of the country".

As noted above, there was undisputed evidence that the Landlord had a history of delaying proceedings held by the RTB on the grounds they wished to have the owner attend the hearing and when those hearings were reconvened the owner was not present and was not made available to be cross examined. Furthermore, there was email evidence before me that the manufactured home park, (the Park) was being operated by various landlords (as defined by the *Act*), as some of those emails were signed by the Landlord, E.M., while others were signed by her spouse, B.M. "Per: the owners of [Corporate Landlord's name and address]".

Upon review of the oral submissions made during the January 30, 2015 session, when considering the request for adjournment I asked the Tenants if B.M. had been involved in the matters relating to their application as the Tenants had submitted evidence (Ex 18-1) that B.M. acted as a landlord in relation to these matters. That question was asked, in accordance with 12.3 of the Rules of Procedure. The Tenants responded that B.M. was involved in these matters, which resulted in my issuance of orders that the Owner, the Landlord, and B.M. appear at the reconvened hearing. All three people who were ordered to attend the April 24, 2015, session, met the definition of a landlord, as provided in section 1 of the *Act*. Although the Landlord immediately disputed my oral Order to have B.M. appear at the reconvened proceeding, the Tenants did not dispute my oral Order, nor did they indicate they would not be questioning B.M.

As indicated above and despite this proceeding commencing on January 30, 2015 as a less formal tribunal process, Counsel submitted requests for more formal processes. Counsel's requests included, amongst other things, requests for an official reporter to

record and transcribe the April 24, 2015 proceeding, plus the issuance of Summonses and payment of conduct money to the Owner and B.M.; despite their appearance being ordered by myself, as delegate to the director, in accordance with section 55(3) of the *Act* and Rule # 6.5 of the Rules of Procedure. Counsel's written request further stated that they request that summonses and conduct money be paid because the corporate Landlord does not intend to, or may not, call either the Owner or B.M. to present evidence.

Upon review of the foregoing, I granted Counsel's requests, issuing summonses to the Owner and B.M., on March 24, 2015. An Interim Decision was issued on March 26, 2015 granting the recording and transcription of the hearing. The summonses were sent to the Landlords at the service address provide on the Tenants' application, as confirmed by the Landlord during the January 30, 2015 proceeding, and a second copy was sent to Counsel's address.

Despite my oral and written Orders of January 30, 2015, and the summonses issued by the delegate of the Director on March 24, 2015, B.M. contravened those Orders and Summons as he was not in attendance at the April 24, 2015 proceeding. Each party was given the opportunity to provide submissions regarding B.M.'s failure to attend.

I do not accept Counsel's argument that my issuance of the Orders for attendance in my Interim Decision were in anyway a breach of this adversarial proceeding as they were clearly ordered in accordance with the Rules of Procedure. Furthermore, I do not accept Counsel's submission that B.M. was excused from complying with my Orders or Summons to attend the January 30, 2015 teleconference proceeding on the grounds that he was not offered payment of conduct money or that the it was the Landlords' "position that he had no useful evidence to provide, and so we did not call him in our defence" [sic] [TS p158 lines 14 – 18]

Furthermore, I do not accept Counsel's submission that B.M. was not properly served copies of the Tenants' application and Summons, as the corporate Landlord was properly served notice of the application and hearing and the summons issued to B.M. was served to the address at which he himself conducted business as a landlord, which is in accordance with section 82 (1) of the *Act*, as listed above.

It was not until the matter of B.M.'s failure to attend was raised in the April 24, 2015 proceeding, did the Tenants submit that they would not be questioning B.M.

As explained during the hearing [TS p 79 lines 18 to 21], consideration was not given for the payment of conduct money to B.M. as the Orders to attend and Summons to appear were issued by myself, as designate of the director, pursuant to section 69(1)(a) of the *Act*. Furthermore, the summons was issued only at the request of Counsel and not by the request of the Tenants. The RTB provides civil dispute resolution processes as an Administrative Tribunal which is aligned with the civil courts pursuant to the *Administrative Tribunals Act*; therefore, the RTB is not required to pay conduct money when the director or her delegate issues a summons to appear.

Section 69(3) of the *Act* stipulates that if a person named in and served with a summons under subsection (1) does not comply with the summons the person is liable, on application to the Supreme Court, to be committed for contempt as if in breach of a judgment or an order of the Supreme Court.

When determining how to proceed regarding B.M.'s failure to appear, I considered the following: there was undeniable evidence that the failure to attend was intentional; there was no evidence that B.M. made any attempt to appear or correct his failure to appear, there was no evidence that the contravention was repeated or continuous, and there was no evidence before me that B.M. had failed to attend prior to this proceeding. Although the failure to attend was a serious and intentional breach of the *Act*, it did not have a material effect on the Tenants' ability to present the merits of their case.

Based on the above, I concluded that the Tenants were not prejudiced by B.M.'s failure to appear at the April 24, 2015 hearing. Therefore, I have determined that there were insufficient grounds to have the matter of B.M.'s failure to attend reviewed for application to Supreme Court for contempt. I do however issue cautions to all of the Landlords involved in this matter that they may be subject to application for contempt and a review for penalty if, in the future, they are found to have intentionally breached Orders for attendance or Summons issued by the director.

At the outset of the April 24, 2015 session the Tenants requested that their application for Dispute Resolution be amended to add the Landlords' personal names and the new corporate owner as respondents to their application for Dispute Resolution.

The Tenants submitted that now that they know that the corporate Landlord has sold the Park they were concerned they would not be able to be compensated for their claim and therefore, the Landlords' personal names should be added. They also submitted that since the date they were notified of the change in ownership they served the new owner with copies of their application and all documentary evidence. They argued that despite their communications and request that the new owners appear at the April 24, 2015 hearing the new owners declined to attend.

Counsel disputed the Tenants' request to amend their application and argued that the Landlords have not been served notice that they were named respondents to this dispute in their personal capacity. Furthermore, the Landlords have not been given an opportunity to prepare a response to the Tenants' application in their personal capacity.

The Rules of Procedure provide for applications to be amended. However, Rule # 2.11 stipulates that an amended application must be filed with the RTB and copies of the amended application must be served on each respondent so that they receive it at least 14 days before the scheduled hearing in order to allow the respondent an opportunity to respond.

In this case, despite the Tenants being informed of the sale of the Park several weeks before the April 24, 2015 proceeding, they did not file or serve parties with an amended application. Accordingly, I dismiss the Tenants' request to amend their application to add the Landlords' personal names and the new corporate landlord's name as respondents to their application.

Upon review of the Tenants' application, the Tenants stated that, in consideration that the Park has been sold and the Landlords no longer have authority to act as landlords at this Park, they were withdrawing the following items as requested in their application:

- An Order that the landlord comply with the *Act* and Regulations regarding any future service or facility reduction or termination;
- Order the park owner, B.O., not enter site [Tenants' site number] for a period of 1 year;
- Order that the landlord and their agents not enter site [*Tenants' site number*] except in full compliance with Section 23 of the *Act*; and
- Order that the landlord not remove any of the applicants' property from site [*Tenants' site number*] without an order from the RTB.

The Tenants confirmed that they wished to proceed with their remaining requests for monetary compensation, listed in their application and on page 3 of their written submission, as well as their request regarding a recommendation for an Administrative Penalty.

In their written submission, the Tenants requested that the DRO (an abbreviation for Dispute Resolution Officer, the former title of RTB Arbitrators), provide information to the Director recommending an Administrative Penalty against the landlord under sections 86.1(1) and 87(2) of the *Act*. I accept Counsel's submission that it is the Director herself who holds the authority to determine if a matter would be reviewed for an Administrative Penalty; therefore, I decline to consider the Tenants' request. The Tenants are at liberty to contact the Director themselves, if they wish to pursue their request for a review for an Administrative Penalty.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, cross exam the other party, and to provide closing remarks. The following is a summary of the testimony and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1) Does this matter fall within the jurisdiction of the *Manufactured Home Park Tenancy Act*?
2) If so, have the Tenants proven entitlement to aggravated damages?
3) Have the Tenants proven entitlement to monetary compensation for the cost of towing their boats to an offsite storage facility and increased storage costs?

4) Have the Tenants proven entitlement to reduced rent for services or facilities agreed upon but not provided?
5) Should the successive landlord be ordered to comply with the *Act*, regulation or tenancy agreement and ordered to provide services or facilities required by law?

Background and Evidence

Undisputed Evidence

The Corporate Landlord owned two manufactured home parks which were operate as a joint venture. The two manufactured home parks are referred hereafter as Park 1 and Park 2. Park 1 and Park 2 are registered as being two separate civic addresses located on two separate parcels of land, even though they are located immediately beside each other and were owned by the same corporation. The Tenants reside in Park 1.

The Landlord, E.M., had been employed by the previous owner, the Owner's father. The Landlord remained employed with the subsequent Corporate Landlord owned by the Owner and his sister K.O. The Landlord managed both Park 1 and Park 2 from one office located in Park 1.

On January 27, 2013, the Tenants and Landlord entered into a written tenancy agreement for their current manufactured home park site (hereinafter referred to as the Site) which is located in Park 1. The tenancy began on February 1, 2013 for the monthly rent of $226.84.

The written tenancy agreement did not stipulate or provide for access to the RV storage compound. The park rules were signed by the Tenants on January 27, 2013, and did not stipulate rules pertaining to the RV storage compound which is located in Park 2.

As confirmed in the Landlord's submission [TS p 143 lines 12-20] B.O. worked as caretaker (previously referred to a maintenance manager) of both Park 1 and Park 2 from 2010 onward. B.O.'s employment with Park 1 began shortly after the death of the previous owner. B.O. was authorized to assign storage spaces in Park 2 [TS p 119 lines 6-9].

Sometime in March 2013, the Tenants entered into a verbal agreement with the Landlord to rent a storage space in the RV vehicle storage compound located in Park 2, for storage of their two boats. B.O. assigned the Tenants storage space # 9 and the Tenants prepaid the rental fee from March 20, 2013 to June 2014. A second payment was made to the Landlord prepaying the RV storage compound fees for the period of July 2014 to the end of June 2015. The annual prepayment of storage fees was not a requirement of the Landlord. The Tenants prepaid the fee for their own convenience.

In May 2013 the Owner stopped the Tenant when he was walking through the Park at which time the Owner questioned the Tenant. The Owner asked the Tenant who he was

and questioned what the Tenant was doing in the Park. [TS p 112 to 113 lines 6-25 and 1 – 9].

On October 1, 2014 at 1:03 p.m. the Landlord sent an email to the Tenants which stated as follows:

> *We have a request from a tenant in [Park 2 name] for storage space in the compound, since we did you a favour by accommodating your request even though you are not a tenant in [Park 2 name]. Based on the correspondence in the last month that you are not satisfied with the way we take care of things, please remove your boat from the compound by October 15th, 2014. We will refund any portion owed to you on your prepayment of fees.* [Ex 5]
>
> [Reproduced as written, excluding the actual name of Park 2]

Exhibit "Ex 6" submitted by the Tenants argues that the Tenants' use of the RV storage compound constituted a material term of their tenancy agreement.

The Tenants submitted evidence [Ex 7] of their letter to the Landlord dated October 13, 2014, which clarified the effective dates of storage at Park 1 and Park 2 as follows:

> *Your agent [name B.O.] assigned me an initial storage space in a non-secure area in [Park 1 name] in April 2013 and assigned me storage bay 9 in the secure compound when a space became free in June 2013.* [Ex 7 para 4]
>
> [Reproduced as written, excluding *Act*ual names]

> *If the landlord obtains a Rental Tenancy Branch order requiring that I vacate the RV compound I will comply with such an order.* [Ex 7 para 6]
>
> [Reproduced as written]

The Landlord placed a printed copy of their responding email dated October 15, 2014, into the Tenants' mailbox. The email document states, in part:

> *This is the final communication on this matter. This is not negotiable*
>
> *Refer back to email of October 5, 2014. One change that we are adding another 15 days to your move out date so that means you need move your boat on October 31, 2014. We have now given you 30 days' notice. A refund will be issued for you prepayment.*
>
> [Reproduced as written]

The Tenants were issued a refund cheque on October 27, 2014, in the amount of $180.00 which was comprised of 8 month's rent (8 x $20.00 = $160.00 November 2014 through to June 2015) plus an additional $20.00 for a "notice fee" [TS p 94 lines 17 – 21].

On November 19, 2014, the towing company contacted the Tenants and informed them that the Landlord arranged to have the Tenants' boats removed from the RV vehicle storage compound that day. The Tenants' boat Miss C. was towed to a mini storage approximately 5 km from Park 2 and the Tenants were required to pay the cost of towing in the amount of $205.25 [Ex 9]. The other boat, the dingy, was moved by the Tenants to a different location.

It was undisputed that the Tenant, T.B. acknowledged that he engaged in a somewhat confrontational discussion with the Owner on the day his boats were being towed [TS p 96 – 97 Lines 9-25 and 1 – 15].

The Tenants' Submissions

In support of their application the Tenants submitted documentary evidence which included, among other things, a 17 page written submission [WS], and 22 exhibits [Ex]. The Tenants submitted that the Landlords terminated their access to the storage facility, in breach of the *Act*. They argued that the Landlords' actions were malicious and were in retaliation for the Tenants' involvement in hearings heard by the RTB, a Supreme Court Judicial Review, and their tenant association. They submitted that they were not provided the required 30 day notice to cancel a service or facility and that the Landlords did not provide notice in the approved form.

Relevant excerpts of the Tenants' evidence are listed below.

> *At no time did the landlord indicate that as residents of [name] Park 1 our rights to the RV compound were second to the rights of tenants in [name] Park 2. [WS pg 6 par 1].*
>
> *The landlord cannot reasonably claim that they gave a proper 30 days notice when they gave 15 days, then 10 days, then waited 19 days before removal of Miss C [boat's name]. [WS p 7 par 5]*
>
> [Reproduced as written]

The Landlord, B.M., responded to the Tenant's security concerns with an email on September 18, 2014 [Ex 18-1], where the Landlord wrote:

> *After discussing your email with **one of the owners** it has been decided that the staff will try to keep the gate locked…* [My emphasis added with bolding.]
>
> *…I can only suggest that if you are uncomfortable with the security of the compound you may possibly want to look for another storage facility, and the [corporate name] will refund any monies you have prepaid for your spot.*
>
> [Reproduced as written]

The notice issued by the Landlords was not in the approved form (RTB-24) and was missing: the full names of both tenants; the complete rental unit address; a description

of service or facility; an explanation of the termination or restriction; the amount that rent will be reduced as a result of the termination or restriction; the effective date of the rent reduction; the new amount of rent owed; and the landlord's signature and date of signature. [WS pg 7 and 8].

Ex 17 of the Tenants' evidence included a copy of the RTB Decision issued October 10, 2014, where this Tenant assisted another tenant in a dispute with this Landlord. The Arbitrator heard evidence regarding a loss of quiet enjoyment and provided the parties information on the loss of quiet enjoyment and harassment on pages 13 – 17 of that decision. At the top of page 16 the Arbitrator wrote as follows:

> • ***Harassment***
>
> *Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome".*[3] *As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions, however all reflect the element of ongoing or repeated Activity by the harasser.*
>
> [Reproduced as written]

The Tenants argued that the cancellation of their storage was a form of harassment which caused them to suffer a loss of quiet enjoyment. As such they now seek Orders and monetary compensation of $4,846.00 comprised of the following:

1) Aggravated damages in the amount of $4200.00 which is comprised of $200.00 per Tenant for the 10.5 day period where they suffered a loss of quiet enjoyment that was described as "significant disruption" [TS p 43 lines 7 – 23];
2) Towing costs of $205.28 which were incurred on November 19, 2014;
3) Compensation of $441.00 for the difference in costs of storage from $20.00 per month for storage at Park 2 and their current storage which is charged at $73.50 per month; and
4) An order against the successive landlord for the restoration of the storage facility or reduced rent in the monthly amount of $67.84 for services or facilities agreed upon but not provided.

Landlords' Submissions

The Owner argued that the Tenants' access to the RV storage compound was cancelled because a resident of Park 2 requested access to storage. The following is an excerpt of the Tenant T.B.'s cross examination of the Owner:

> *Q – is after – there was no one who requested storage in [Park name] Park 2 in the 18 months we were there?*

A – There was people requesting storage all the time, but it was full
[TS p 114 lines 7 – 11]

Q – You just testified that numerous people requested spots in [Park name] Park 2 RV storage in those 15, 18 months, but no one got in because it was full; is that correct?

A – That's right.
[TS p 114 lines 20 – 24; Reproduced as written]

The Owner testified that he was in the office and involved in the conversation when the verbal agreement for RV storage was entered into with the Tenants. He asserted that he told the Tenants that the RV storage would be temporary because they did not reside in Park 2 [TS p 100 and 101 Lines 19 – 25, 1 -25, and 1 – 11].

In addition, the Owner stated:

I knew that you caused a lot of work for my secretary and you cost a lot of money and a lot of letters and a lot of time. I knew – I was aware of that. You personally as a tenant? I didn't know you. So I – but I was aware of every day there was another letter from you complaining about something. I was aware of that. But as a personal – as a person I didn't know. I don't even know you. So I have no – problems with you about that. [TS p 117 to 118 Lines 17 – 25 and 1 – 3]
[Reproduced as written]

The Owner testified that he was unsure if the decision to sell Park 1 and Park 2 was considered prior to or after Christmas 2014 and he was unsure if the consideration to sell the Parks occurred close to the time he was involved in having the Tenants remove their boats from the RV storage facility. [TS p 121 to 122 Lines 10 – 25 and 1-18]

The following arguments were put forward by the Landlords in response to the claim for loss of quiet enjoyment and aggravated damages:

Further, the alleged loss of quiet enjoyment was minimally disruptive. It did not, for example, take place near their manufactured home site. As disclosed by the tenants' own evidence, the landlord took efforts to minimize disruption to the tenants by employing a professional tow truck company, which in the tenant's own words, was careful and helpful. No damage was done to the boat or to dingy. [TS p 170 lines 17 – 25]
[Reproduced as written]

Analysis

After careful consideration of the foregoing, the oral submissions, documentary evidence submitted prior to January 30, 2015 or as ordered afterwards, and on a balance of probabilities I find as follows:

Regarding the matter of jurisdiction, section 1(e) of the *Act* defines service or facility to include parking and storage areas as follows:

> ***"service or facility"*** *includes any of the following that are provided or agreed to be provided by a landlord to the tenant of a manufactured home site:*
>
> > *(a) water, sewerage, electricity, lighting, roadway and other facilities;*
> >
> > *(b) utilities and related services;*
> >
> > *(c) garbage facilities and related services;*
> >
> > *(d) laundry facilities;*
> >
> > *(e) parking and storage areas;*
> >
> > *(f) recreation facilities;*

A service or facility may be provided for in a tenancy agreement and the cost of that service or facility may be included in the monthly rent **or** the service or facility may be offered by a landlord to a tenant separate from the tenancy agreement, for an additional non-refundable fee, depending on the circumstances.

To clarify the above, section 1 of the *Act* defines rent to include money payable by a tenant to a landlord in return for the right to possess a manufactured home site, for use of common areas and for services or facilities, but does not include a fee prescribed under section 89(2)(O) of the *Act* [*regulations in relation to fees*].

Section 5(1)(e) of the *Regulations* provides that a non-refundable fee may be charged for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

Neither the *Act* nor the *Regulations* stipulate that parking or storage facilities provided by a landlord to a tenant must be located on the same property or at the same civic address as the manufactured home park. Accordingly, the fact that the RV storage compound in question was located in Park 2 is not relevant to the matters before me. The relevant issue is that the RV storage was provided as a service or facility by the Corporate Landlord.

Based on the foregoing and the undisputed evidence that the tenancy agreement did not provide a term for the provision of a service or facility regarding access to the RV storage compound, I conclude that the Tenants entered into a verbal agreement with

the Landlord to pay a monthly non-refundable fee of $20.00 for the service or facility of parking and/or storage located in the RV storage compound in Park 2, pursuant to section 5(1)(e) of the *Regulations.*

Section 21(1) of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the manufactured home site as a site for a manufactured home, or providing the service or facility is a material term of the tenancy agreement.

Section 21 (2) of the *Act* provides that a landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Case law provides that a material term is a term written into the tenancy agreement that both parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

In *Worth and Murray v. Tennenbaum*, an unreported decision of the B.C. Supreme Court, August 18, 1980, Vancouver Registry A801884, His Honour Judge Spencer found at page 5 of his decision:

> *As a matter of law the various terms of the tenancy agreement may or may not be material to it in the sense that they justify repudiation in case of a breach. It is wrong to say that simply because the covenant was there it must have been material.*

Under the *Act*, section 11, landlords are required to prepare a written tenancy agreement and provide a copy to the tenant. The written tenancy agreement, as with any contract, reflects the terms both parties agreed upon when the tenancy or contract formed.

Common law prevents a party to a written contract from presenting oral evidence that contradicts or adds to the written terms of a contract that appear to be whole. The rationale for this rule is that since the contracting parties have reduced their agreement to a final written agreement, oral evidence should not be considered when interpreting the written terms, as the parties had decided to ultimately leave them out of the contract. In other words, one may not use evidence made prior to the written tenancy agreement to contradict the writing. Also, changes made after the tenancy agreement was formed must be recorded in writing and agreed to by both parties. Therefore, I do not accept the Tenants' argument that their verbal agreement for access to the RV storage compound formed part of their tenancy agreement or that it formed a material term of their tenancy agreement, as the tenancy agreement was not amended to include such a term.

That being said, as indicated above, I concluded that the Tenants were provided a service or facility in accordance with section 5(1)(e) of the *Regulations.* That is to say that RV storage was requested by the Tenants which had not been required to be provided under the tenancy agreement and for which the Landlord charged a non-refundable fee. Therefore, I find the Landlord was entitled to cancel the service or facility by providing 30 days' notice in the approved form, in accordance with section 21(2) of the *Act*.

In response to the Landlords' argument that the Tenants must meet the burden to address the six issues listed in Residential Tenancy Policy Guideline # 22 in order to prove entitlement to reduced rent, I note that this policy guideline relates to services or facilities included in a written tenancy agreement or which are included in the monthly rent.

As noted above I determined that this matter relates to a service and/or facility that was provided under a separate agreement which required the Tenants to pay a non-refundable fee. Accordingly, I conclude that the Residential Tenancy Policy Guideline 22 is not relevant to the matters before me. Furthermore, I conclude that the Tenants are not entitled to reduced rent now that their service or facility has been cancelled. Rather, the Tenants are no longer required to pay non-refundable fees of $20.00 per month. Therefore, I dismiss the Tenants' claim for reduced rent for services or facilities agreed upon but not provided.

The Tenants have sought $4,200.00 as compensation for "aggravated damages for loss of quiet enjoyment and related damages" [WS p 2 par 9]. The Tenants have asserted that the Landlords' actions of cancelling their access to the RV storage compound were retaliatory and constituted harassment. Although the Tenants have grouped their claim for loss of quiet enjoyment under aggravated damages, I must first determine if there was sufficient evidence to prove the Tenants suffered a loss of quiet enjoyment.

Section 22 of the *Act* provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy, freedom from unreasonable disturbance, and use of common areas for reasonable and lawful purposes, free from significant interference.

The irrefutable evidence was the Landlord canceled the service or facility without issuing a proper 30 days' written notice in the approved form, in breach of section 21(2) of the *Act*. When the Tenants pointed out the breach to the Landlords the Landlords attempted to remedy the situation by extending the notice period by15 days to October 31, 2014. The Landlords then issued a refund cheque to the Tenants, dated October 27, 2014, which included the amounts prepaid by the Tenants plus an additional $20.00 which was an amount equal to one month's non-refundable fee.

Despite the Tenants informing the Landlord, on October 13, 2014, of the requirements of the *Act* and that the Landlord would require an Order from the RTB to end their RV storage [Ex 7], the Landlords made no efforts to seek a remedy through dispute

resolution and took no action until November 19, 2014, when the Landlords hired a towing company to remove the Tenants boats, without prior notice to the Tenants. The Tenants had no indication that their boats were being removed until the towing company gave the Tenants a courtesy call to ensure the boats were prepared for transport.

I favored the Tenants' evidence over the Landlords' evidence regarding the assertion that the Owner's actions were retaliatory and intentional to cause the Tenants disruption, stress, or a loss of quiet enjoyment. I favored the evidence of the Tenants over the Landlords, in part, because the Tenants' evidence was forthright and credible. The Tenants readily acknowledged that they engaged in a confrontation with the Owner on the day the boats were being towed. In my view the Tenants willingness to admit involvement when they could easily have stated they did not engage in a confrontation with the Owner lends credibility to their evidence.

I find the Owner's explanation that he was in the office at the time the Tenants arranged access to the RV storage compound with the Landlord and that he informed the parties that use of the RV storage compound was temporary until a resident of Park 2 requested to use the storage compound, to be improbable, given the evidence before me. I made this finding in part due to the undisputed evidence that a month later, (May 2013) the Owner spoke with the Tenant on the road and questioned who he was and asked why he was in Park 1. Also, the Owner testified that they had received numerous requests for access to RV storage from residents in Park 2 but those requests were denied because "it was full".

In addition, it appeared that the Owner had a selective memory at times. For example, during the hearing the Owner was able to recall a conversation about storage access which allegedly took place back April 2013; however, he was not able to recall a more significant event such as when they were contacted about the multi-million dollar sale of both Park 1 and Park 2.

I do not accept that the timing of the cancellation of the Tenants' access to the RV storage compound in October 2014, was a mere coincidence. Rather, I considered that these Tenants were involved with matters heard before the RTB between March 17, 2014 and September 30, 2014 and the Judicial Review which was heard between August 11 and August 28, 2014. All of which resulted in unfavorable results for the Landlord.

Furthermore, I considered that the Tenant's email regarding security issues with the RV storage compound was sent on September 16, 2014, and the email from the Landlord on October 1, 2014 to cancel the Tenant`s RV storage compound stated:

> *…Based on the correspondence in the last month that you are not satisfied with the way we take care of things, please remove your boat from the compound by October 15th, 2014.* [Ex 5]

In addition, I considered the Owner's statement that he knew that the Tenants had "*caused a lot of work for my secretary and you cost a lot of money and a lot of letters and a lot of time." [TS p 117 lines 17 – 19]*

Based on the above, I favored the Tenants' submissions that the cancellation of their RV storage was retaliatory, constituted a form of harassment, and caused a loss of quiet enjoyment. I do not accept the Landlord's argument that the alleged loss of quiet enjoyment was minimally disruptive due to the care taken by the Landlords to hire a professional tow truck company or because the Tenants' boats were not damaged in transit. Rather, I accept the Tenants' submissions that the Landlords' action of cancelling their access and usage of the RV storage at Park 2 created an ongoing loss of quiet enjoyment, as the cancellation of the RV storage continues to the present.

As listed above in the RTB Decision dated October 10, 2014, the Arbitrator acknowledged that there were misunderstandings regarding the Landlord's obligations in carrying out their duties in accordance with the *Act*. That Arbitrator went on to list obligations regarding quiet enjoyment, damages, and harassment at pages 14 thru 16. Therefore, the Landlord ought to have known that their actions of intentionally removing or restricting services to the RV storage compound in breach of the *Act,* would constitute a loss of quiet enjoyment and could be seen as vexatious conduct that would be reasonably unwelcomed by the Tenants. Accordingly, I conclude that the Landlords` actions caused significant interference with the Tenants right to quiet enjoyment of their Site, common areas, and their general living in the Park.

Section 60 of the *ACT* states:

> Without limiting the general authority in section 55 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

Residential Tenancy Policy Guideline 16 states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss in the value of the tenancy, but they are an affirmation that there has been an infraction of a legal right.

I agree with the Landlords' submission that the *Act* does not provide authority to an Arbitrator to award punitive damages and that in this case the loss was not directly related to a service or facility provided for in the tenancy agreement. I further agree that any award should not be considered based solely on the fees the Tenants are required

to pay at a different storage location. Therefore I concluded that those facts should be taken into consideration when considering an award for aggravated damages.

That being said, as noted above, the provision of RV storage in this case is covered under the *Act* as provided for under non-refundable fees. I find that storage was terminated in breach of section 21(2) of the *Act* which I accept caused the Tenants to suffer the unexpected financial loss of the towing fees as well as suffering a loss of quiet enjoyment resulting from the stress incurred for the 10.5 days during which they had to deal with the pending loss of their RV storage and relocation of their boats to an offsite storage facility. Notwithstanding the loss of quiet enjoyment, I have also considered that the Tenants continued to have full use and occupation of their Site during this 10.5 day period, even though it was a stressful time for them.

While I accept that the Tenants would normally be responsible for the cost of relocating their boats to a different RV storage facility, in this case their right to choose how or who relocated the boats was denied by the Landlords' actions of hiring a towing company without prior notice to the Tenants and without an Order issued by the RTB.

Based on the above, I award the Tenants monetary compensation in the amount of **$257.78.** This award is comprised of reimbursement of the towing fees of $205.28 plus $52.50 in nominal damages for loss of quiet enjoyment and/or aggravated damages which is comprised of 10.5 days at $5.00 per day.

Section 52(5) of the *Act* stipulates that the director may refuse to accept or consider a request upon application for dispute resolution if in the director's opinion the application does not disclose a dispute that may be determined under this Part.

I decline to issue orders to the successive landlord to comply with the *Act*, regulation or tenancy agreement and to provide services or facilities required by law, as the successive landlord was not a named party to this dispute. While I accept that the Tenants served the successive landlord with copies of their application and evidence, the Tenants did not amend their application to name the successive landlord as a respondent.

Furthermore, as I have found that access to the RV storage compound was not a material term of the tenancy agreement, it would not be prudent to order access to the RV storage compound for a non-refundable fee. The successive landlord would have the right to cancel that RV storage upon 30 days' notice which would only place the Tenants in the exact same position where they would have to find alternate storage with only 30 days' notice. That being said the Tenants are at liberty to enter into a new tenancy agreement or agreement for non-refundable fees with the successive landlord if both parties were in agreement.

Section 65(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 52 (2) (c) *[starting proceedings]* or 72 (3) (b) *[application for review*

of director's decision] by one party to a dispute resolution proceeding to another party or to the director.

The Tenants have partially succeeded with their application; therefore, I award recovery of the **$50.00** filing fee, pursuant to section 65(1) of the *Act*.

Conclusion

The Landlords have been found to have breached section 21(2) of the *Act* by improperly terminating a service or facility and section 22 of the *Act* due to a breach of the Tenants` right to quiet enjoyment. The Tenants' application was partially upheld and they were awarded monetary compensation of $257.78.

The Tenants have been issued a Monetary Order for **$307.78** ($257.78 damages + $50.00 filing fee). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the British Columbia Small Claims Court and enforced as an Order of that Court.

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: June 10, 2015

Residential Tenancy Branch