



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OPT, FF

### Introduction

The tenant applies for an order establishing her right to possess a neighbouring manufactured home site, site #83, and, alternatively, for a monetary award of a year's free pad rent.

### Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant is entitled to any of the relief requested?

### Background and Evidence

The manufactured home site in question, #84, is located in a 112 site manufactured home park.

The tenant purchased the manufactured home on site and began renting from the landlord on October 1, 2007. The parties disagree about what the rent is.

There is no written tenancy agreement.

Mr. K.S. attended with the respondent landlord. He says he is part owner of the park. The tenant denies it, saying that a title search reveals that only the respondent Mr. J.S.B. is the owner.

Ms. L.H. is the park manager.

The tenant argues that site #83 is hers as well. The landlord denies it.

The tenant says that in 2012 the landlord installed a new water line to her site and in the process dug up her front yard, preventing her access to the site and her home.

The tenant says the landlord has not complied with certain orders made in decisions from previous dispute resolution hearings.

In her materials, delivered to the landlord, the tenant has listed seven previous dispute resolution file numbers for dispute resolutions between May 2009 and as recently as April 2015.

The landlord and his representatives indicated that they were not familiar with the terms of any of those decisions.

I have reviewed the decisions and determined:

- In a decision May 5, 2009, an arbitrator determined that by agreement with the landlord, the tenant could keep her recreational vehicle (RV) on the neighbouring lot (lot #83). It was noted the rent was then \$265.00.
- In a decision September 16, 2010, the same arbitrator determined that it was agreed between the parties that the tenant had “exclusive use” of pad #83 where she stored her RV and other items. The respondent was the same Mr. J.S.B. and Mr. K.S. was the landlord’s represent at that hearing. It would appear he was not familiar with the arbitrator’s previous decision May 5, 2009 and portions were read out to him by the arbitrator. It was agreed that the rent was \$350.00 per month for the two pads together, due on the first of each month.
- In a decision December 13, 2012 in which the landlord claimed an order of possession pursuant to a ten day Notice to End Tenancy and for a monetary award for unpaid rent, the arbitrator determined that the rent was \$300.00 per month. Indeed, the landlord’s claim for rent arrears was at that \$300.00 rent.

At this hearing the tenant advanced additional claims regarding sewage in a water box (previously an unaddressed subject in the September 16, 2010 arbitration), breach of the covenant of quiet enjoyment alleged to have been caused by water line replacement in 2012. She intimated that though the “water box” had been re-rerouted, it was still the route for her sewer outlet and still had sewage in it.

### Analysis

The claim fairly raised by the tenant's application is whether she is entitled to lot #83 and, if she is not, then for compensation for having paid rent for it or done work on it.

Subject to certain comments below regarding the items raised as claims during the hearing, my jurisdiction and the principle of fairness restrict me to adjudicate only on claims made and particularized in the originating documentation. To do more, without a respondent's agreement, would be to force the respondent to deal with matters that he, she or it have not been fairly warned about and have not had a reasonable opportunity to prepare for.

The landlord has created a significant problem for himself by not having a written tenancy agreement with this tenant. As has been pointed out in previous proceedings, a landlord is required by law to create one. There is now only a verbal tenancy agreement. The *Manufactured Home Part Tenancy Act* (the "Act") imposes mandatory terms to both verbal and written tenancy agreements. They are terms of this tenancy. Those terms cannot be varied or contracted out of. Those terms were attached to the September 16, 2010 arbitrator's decision and I have attached them to this decision for the parties' convenience.

The decision made September 16, 2010 is a clear and binding ruling that this tenant has exclusive use and possession of manufactured home site #83 as well as #84. It is part of her tenancy agreement. I find it as a fact and declare that it is so. The landlord cannot change it without the tenant's agreement or a further arbitrator's order.

It is equally clear from the decision December 13, 2012, that the tenant's rent for the two sites was then \$300.00 per month. The landlord has not lawfully imposed a rent increase since then, nor has the tenant agreed to one. The tenant's current rent is \$300.00 per month, due on the first of each month.

The landlord has not provided to the tenant the landlord's correct legal name(s) and address, an address for service and telephone number for the landlord, a copy of the Park Rules and a map showing the boundaries of both lots #83 and #84. The landlord was ordered to provide all these in the September 16, 2010 decision. That question was not fairly raised in this proceeding. Had this issue been fairly raised at this hearing I would have considered authorizing the tenant to withhold rent until the landlord complied. The tenant is free to apply should the landlord not provide these items immediately on receipt of this decision.

The tenant's evidence shows a significant interference with her use of her site(s) as a result of the water main work conducted by the landlord. As that question has not been

fairly raised in the application, I make no determination about whether such work was necessarily incidental to the regular maintenance of the park or whether the interference was so great as to justify compensation. The tenant is free to apply in that regard if she is of the latter view.

The tenant alluded to the water box still servicing the sewer pipe to her site. Again, that question has not been fairly raised here. However, I point out that if that sewer connection is prone to freezing, as was the water line it serviced before the 2012 water line work, then the landlord is responsible to see that it does not. The tenant is free to apply in that regard and in regard to her claim that leaking sewage has not been cleaned out from the water box.

### Conclusion

The tenant's application is allowed. She is entitled to exclusive use and possession of both manufactured home sites #84 and #83. I grant her recovery of the \$50.00 filing fee for this application and authorize her to reduce her next rent due by \$50.00 in full satisfaction of the fee.

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*.

The parties should note the APPENDIX ATTACHED.

Dated: July 27, 2015

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Residential Tenancy Branch

## APPENDIX

### **Schedule**

#### **1 Application of the Manufactured Home Park Tenancy Act**

(1) The terms of this tenancy agreement and any changes or additions to the terms may not contradict or change any right or obligation under the Manufactured Home Park Tenancy Act or a regulation made under that Act, or any standard term. If a term of this tenancy agreement does contradict or change such a right, obligation or standard term, the term of the tenancy agreement is void.

(2) Any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable.

(3) The requirement for agreement under subsection (2) does not apply to the following:

(a) a rent increase given in accordance with the Manufactured Home Park Tenancy Act;

(b) a withdrawal of, or a restriction on, a service or facility in accordance with the Manufactured Home Park Tenancy Act;

(c) park rules established in accordance with the Manufactured Home Park Tenancy Act and the regulations;

(d) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

#### **2 Security**

(1) The landlord is not permitted to require or accept a security deposit for a manufactured home park tenancy.

(2) The landlord is permitted to require security, in the form of proof of third party insurance, against damage to the park caused by moving the manufactured home on or off the manufactured home site.

#### **3 Pets**

(1) Any term of this tenancy agreement that prohibits, or restricts the size of, a pet or that governs the tenant's obligations regarding the keeping of a pet on the manufactured home site is subject to the rights and restrictions under the Guide Animal Act.

(2) The landlord is not permitted to require or accept a pet damage deposit for a manufactured home park tenancy.

#### **4 Payment of rent**

(1) The tenant must pay the rent on time, unless the tenant is permitted under the Act to deduct from the rent. If the rent is late, the landlord may issue a notice to end a tenancy to the tenant, which may take effect not earlier than 10 days after the date the tenant receives the notice.

(2) The landlord must not take away or make the tenant pay extra for a service or facility that is already included in the rent, unless a reduction is made under section 21 (2) of the Act.

(3) The landlord must give the tenant a receipt for rent paid in cash.

(4) The landlord must return to the tenant on or before the last day of the tenancy any post-dated cheques for rent that remain in the possession of the landlord. If the landlord does not have a forwarding address for the tenant and the tenant has vacated the manufactured home park without notice to the landlord, the landlord must forward any post-dated cheques for rent to the tenant when the tenant provides a forwarding address in writing.

#### **5 Rent increases**

(1) Once a year the landlord may increase the rent for the existing tenant. The landlord may only increase the rent 12 months after the date that the existing rent was established with the tenant or 12 months after the date of the last legal rent increase for the tenant, even if there is a new landlord or a new tenant by way of an assignment. The landlord must use the approved Notice of Rent Increase form available from any Residential Tenancy office or Government Agent.

(2) A landlord must give a tenant 3 whole months notice, in writing, of a rent increase.

[For example, if the rent is due on the 1st of the month and the tenant is given notice any time in January, including January 1st, there must be 3 whole months before the increase begins. In this example, the months are February, March and April, so the increase would begin on May 1st.]

(3) The landlord may increase the rent only in the amount set out by the regulations. If the tenant thinks the rent increase is more than is allowed by the regulations, the tenant may talk to the landlord or contact the Residential Tenancy office for assistance.

(4) Either the landlord or the tenant may obtain the inflation rate prescribed for a rent increase from the Residential Tenancy office.

#### **6 Assign or sublet**

(1) The tenant may assign the tenancy agreement or sublet the manufactured home site to another person only if one of the following applies:

(a) the tenant has obtained the prior written consent of the landlord of the park to the assignment or sublease, or is deemed to have obtained that consent, in accordance with the regulations;

(b) the tenant has obtained an order of the director authorizing the assignment or sublease.

The landlord and tenant must follow the specific procedure when consent is sought. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent.

(2) If a landlord unreasonably withholds consent to assign or sublet or charges a fee, the tenant may make an application for dispute resolution under the Manufactured Home Park Tenancy Act.

#### **7 Repairs**

(1) Landlord's obligations

(a) The landlord must provide and maintain the manufactured home park in a reasonable state of repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.

(b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may seek an order of the director under the Manufactured Home Park Tenancy Act for the completion and costs of the repair.

(c) The landlord is not required to maintain or repair improvements made to the manufactured home site by a tenant occupying the site, or the assign of the tenant, unless the obligation to do so is a term of this tenancy agreement.

(2) Tenant's obligations

(a) The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas. The tenant must take the necessary steps to repair damage to the manufactured home site or common areas caused by the actions or neglect of the tenant or a person permitted in the manufactured home park by that tenant. The tenant is not responsible for repairs for reasonable wear and tear to the manufactured home site or common areas.

(b) If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may make an application for dispute resolution under the Manufactured Home Park Tenancy Act seeking an order of the director for the cost of repairs, serve a notice to end a tenancy, or both.

(3) Emergency repairs

(a) The landlord must post and maintain in a conspicuous place in the manufactured home park, or give to the tenant in writing, the name and telephone number of the designated contact person for emergency repairs.

(b) If emergency repairs are required, the tenant must make at least two attempts to telephone the designated contact person, and then give the landlord a reasonable time to complete the repairs.

(c) If the emergency repairs are still required, the tenant may undertake the repairs, and claim reimbursement from the landlord, provided a statement of account and receipts are given to the landlord. If the landlord does not reimburse the tenant as required, the tenant may deduct the cost from rent. The landlord may take over completion of the emergency repairs at any time.

(d) Emergency repairs must be urgent and necessary for the health and safety of persons or preservation or use of property in the manufactured home park and are limited to repairing

(i) major leaks in pipes,

(ii) damaged or blocked water or sewer pipes, or

(iii) the electrical systems.

#### **8 Occupants and guests**

(1) The landlord must not stop the tenant from having guests under reasonable circumstances on the manufactured home site and in common areas of the manufactured home park.

(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(3) If the number of occupants on the manufactured home site is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Manufactured Home Park Tenancy Act.

### **9 Locks**

(1) The landlord must not change locks or other means of access to the manufactured home park unless the landlord provides each tenant with new keys or other means of access to the manufactured home park.

(2) The tenant must not change locks or other means of access to common areas of a manufactured home park unless the landlord agrees in writing to the change.

### **10 Landlord's entry on to manufactured home sites**

(1) For the duration of this tenancy agreement, the manufactured home site is the tenant's home and the tenant is entitled to quiet enjoyment, reasonable privacy, freedom from unreasonable disturbance, and exclusive use of the manufactured home site.

(2) The landlord may enter the manufactured home site only if one of the following applies:

(a) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant a written notice which states

(i) the purpose for entering, which must be reasonable, and

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant agrees otherwise;

(b) there is an emergency and the entry is necessary to protect life or property;

(c) the tenant gives the landlord permission to enter at the time of entry or not more than 30 days before the entry;

(d) the tenant has abandoned the site;

(e) the landlord has an order of the director or of a court saying the landlord may enter the site;

(f) the entry is for the purpose of collecting rent or giving or serving a document that under the Act must be given or served.

### **11 Ending the tenancy**

(1) The tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice. A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month.

[For example, if the tenant wants to move at the end of May, the tenant must make sure the landlord receives written notice on or before April 30th.]

(2) This notice must be in writing and must

(a) include the address of the manufactured home site,

(b) include the date the tenancy is to end,

(c) be signed and dated by the tenant, and

(d) include the specific grounds for ending the tenancy, if the tenant is ending a tenancy because the landlord has breached a material term of the tenancy.

(3) If this is a fixed term tenancy, and the agreement does not require the tenant to vacate at the end of the tenancy, the agreement is renewed as a monthly tenancy on the same terms until the tenant gives notice to end a tenancy as required under the Manufactured Home Park Tenancy Act.

(4) The landlord may end the tenancy only for the reasons and only in the manner set out in the Manufactured Home Park Tenancy Act and the landlord must use the approved notice to end a tenancy form available from the Residential Tenancy office.

(5) The landlord and tenant may mutually agree in writing to end this tenancy agreement at any time.

### **12 Landlord to give tenancy agreement to tenant**

The landlord must give the tenant a copy of this agreement promptly, and in any event within 21 days of entering into the agreement.

### **13 Arbitration of disputes**

Either the tenant or the landlord has the right to make an application for dispute resolution, as provided under the Manufactured Home Park Tenancy Act.

[Provisions of the Manufactured Home Park Tenancy Act, S.B.C. 2002, c. 77, relevant to the enactment of this regulation: sections 89 and 96]

**Emergency repairs**

**27** (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of property in the manufactured home park, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes,
  - (ii) damaged or blocked water or sewer pipes,
  - (iii) the electrical systems, or
  - (iv) in prescribed circumstances, the manufactured home site or the manufactured home park.

(2) The landlord must post and maintain in a conspicuous place in the manufactured home park, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted in the manufactured home park by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.



