



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC, OLC, RP, ERP

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 60;
2. An Order for the Landlord to comply – Section 55; and
3. An Order for emergency and other repairs – Section 26 and 27;

The Landlords and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord out of compliance with the Act or tenancy agreement?

Is the Tenant entitled to an order for repairs?

Is the Tenant entitled to compensation?

### Background and Evidence

The tenancy began in November 2005. Rent of \$337.07 is currently payable monthly on the first day of each month.

The Tenant states that the septic system requires repairs as the lid does not seal and gases are leaking into the unit. The Tenant states that the septic tank was placed over the site of a previous saw mill and that the lines are sinking to an elevation that is too low for the tank. The Tenant states that the septic field is now sinking and creating damage to the skirting of the mobile home.

The Tenant states that the septic tank is located in the back of their yard and that several lines flow into this tank. The Tenant states that the neighbouring site recently had repairs to correct an underground break in the line however this did not address the problem with the low elevation. The Tenant states that due to this low elevation the lines are not flowing into the tank properly causing effluent to saturate the ground. The Tenant states that the lines are being forced uphill instead of flowing down. The Tenant states that all the pipes require levelling. The Tenant states that the saturation and leak from the lid are causing health problems for his wife, the other Tenant. The Tenant states that this problem was reported to the Landlord in 2010 and although the Landlord worked on repairing the problem for the neighbour nothing was done for the Tenant's line or the surrounding lines. The Tenant states that the Landlord has never had his line inspected and that despite complaining about the problem repeatedly the Landlord only came in 2014 and said something would be done. The Tenant provided copies of letters sent to the Landlord in relation to their complaints about the septic system.

The Tenant's wife states that she has been ill for at least 5 years due to the smell of the septic system. The Tenant states that she has gotten worse in the past year with coughing and nausea. The Tenant states that her physician recommends that the septic system be fixed. The Tenant provided a letter from her physician dated July 29, 2015. The Tenant states that she informed the Landlord of her illness from the smell but he did nothing. The Tenant states that they did not make an application sooner as the Landlord kept promising to repair the problem and the Tenants believed the Landlord. The Tenant states that she was also diagnosed with lupus in 2006.

The Tenant states that in December 2010 the Landlord asked the Tenant to remove his deck and to discontinue the power to his hot tub in order to replace the lid on the septic tank. The Tenant states that the lid was never replaced and he has been unable to use the deck or hot tub since the Tenant's wife states that she has arthritis and as a result of not being able to use the hot tub she has been unable to reduce the effects of the arthritis and this has resulted in lessened mobility and loss of sleep. The Tenant states that she informed the Landlord about her arthritis last year. The Tenant claims a loss of enjoyment of the deck and hot tub in the amount of \$10,000.00. The Tenant claims \$10,000.00 for health issues and for lost work due to the septic smells.

The Tenant states that the hot tub is no longer working and that they are seeking its replacement. The Tenant states that the hot tub is 12 to 15 years old. The Tenant provided replacement costs quotes. The Tenant also provided estimates for the replacement of the deck in the amount of \$1,600.00.

The Landlord states that the problem with the slope is an ongoing issue that has been addressed numerous times. The Landlord states that the Tenant's line was last checked in 2012 and was found to have been filled with grease and other debris. The Landlord states that the Tenants only informed the Landlord about the smell in late 2014. The Landlord states that they attended the site and found no smell. The Landlord states that the ground was also inspected and that no saturation was found. The Landlord states that the line and system is serviced annually and the last service was done in the fall of 2014. The Landlord states that they are also in the process now of servicing the Tenant's line and the system. The Landlord states that since that date the Tenants have not reported any problems until the Landlord was served with the application.

The Landlord states that approximately 5 years ago they brought in interior health who informed them that no health hazard was found. The Landlord states that they again contacted interior health and were told that there was no health hazard but that the lid could be replaced. The Landlord states that they are now in the process of resealing the lid and replacing the wood cover with cement. The Landlord states that they are going over and above their obligations and that the smell, a subjective sense, has been reported many times over the years and checked as many times with no problems found. The Landlord states that the smell is not a health hazard.

The Landlord states that when the Tenant purchased the mobile home it came with a deck and hot tub that had been installed by the seller without proper authorization or permits and that the deck was built over the septic tank. The Landlord states that the Tenant was informed at the outset that if repairs to the septic were necessary the Tenant would have to remove the deck. The Landlord states that this eventually occurred and the Tenant had to remove that part of the deck that restricted access. The Landlord states that more deck was removed than necessary and that the original state of the deck was very poor and very old. The Landlord states that they never told the Tenant that the hot tub needed to be disconnected and with the proper permits

the Landlord would not stop the Tenant from re installing the hot tub in a different location. The Landlord states that the hot tub was left lying on its side and that if there was any loss of value is would have been negligible due to its age and the Tenant's own actions.

The Landlord states that the Tenant was ill at move-in and has several health problems that predate the septic smells. The Landlord argues that the physician letter noting symptoms could be from anything. The Landlord states that the Tenant never told them she was ill from the septic system. The Landlord states that since the last inspection in 2014 the Parties were involved in a dispute over guest conduct, a confrontation occurred and the Tenant threatened the Landlord with retaliation. The Landlord states that the current application is the act of retaliation and has no basis.

The Tenant states that they called interior health twice and were told that interior health would not be at the site to inspect as the Landlord told the agency there was no need and no smell. The Tenant states that on a previous discussion with interior heath he was informed that if there was no effluent bubbling then there was no issue. The Tenant states that because of the elevation of lines they are full of effluent and that this comes up if the Tenant snakes the line. The Tenant states that the elevation has not been corrected.

The Landlord states that there is no health hazard and that the tank and lines were exposed with no effluent found in the lines, there is no overflow and no saturation. The Landlord states that the Tenant has never informed the Landlord of having to snake the lines since 2014 when grease build up was found in the lines. The lines were serviced at this point and lines are currently clear. The Landlord states that the annual servicing of the system is occurring at the present time.

The Tenant questions the company's work as it belongs to the Landlord's son. The Landlord states that a registered waste water practitioner checked the work being done in spring 2015 and that a document in relation to this check was provided at a previous hearing. The Tenant disputes that a licenced person has ever checked the system

### Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results.

The only evidence of a current or recent septic smell comes from the Tenants and I note that there is no indication that a smell was reported to the Landlord after the fall of 2014. I also note that the letter dated July 24, 2014 from a 3<sup>rd</sup> party provided by the Tenants to support the presence of the smell refers to an incident in the future (2016). This letter does not lend credibility to the Tenant's evidence. The medical note suggests that the Tenant's symptoms of fatigue and coughing leading to vomiting could be caused by exposure to septic fumes and recommends a check of the system. I take this to mean a possible connection only and as this is based solely on the Tenant's self-reporting I give it little weight in establishing either the presence of a smell or that the Tenant's medical problems are from the presence of the smell.

There is no supporting evidence from the Tenant of ground saturation or damage from such ground saturation and the photos, being grainy and obscure, provide no assistance. I accept the Landlord's evidence that the lid is being repaired and that the system is currently undergoing its annual servicing. I also prefer the Landlord's more compelling evidence that there is no saturation at present. The Tenant has not provided any evidence that the Landlord's son as the owner of the company doing the servicing has in any way caused the Landlord to act negligently or improperly. While the Tenant's evidence of the slope of the lines may be accepted, there is insufficient evidence to establish that this is currently a problem. I therefore find that the Tenant has not provided sufficient evidence, on a balance of probabilities, that the sewer system requires an inspection or repairs. I therefore dismiss the Tenant's claims for emergency or other repairs. Considering the evidence of additional medical problems and no evidence of any wage loss from the Tenant I find that the Tenant has failed to provide sufficient evidence to establish either causation or the amount of loss claimed. I therefore dismiss the claim for compensation in relation to health issues.

I accept the Landlord's evidence that the deck was improperly installed and obstructed the septic cover. I find therefore that the Tenant has not substantiated that any loss of use was caused by an act or negligence by the Landlord. I accept the Landlord's evidence that nothing

is stopping the Tenant from installing or using a hot tub. Further I accept that the removal of the hot tub was due to the Tenant's deck issues and not as a result of an act by the Landlord.

For the above reasons I find that the Tenant has failed to substantiate that the Landlord is out of compliance in relation to the maintenance and repair of the septic system or that repairs are required. I also find that the Tenant has failed to substantiate that the Landlord has been negligent or has acted to cause any damage or loss to the Tenants. As none of the Tenant's claims have been successful I dismiss the Tenant's application.

#### Conclusion

The Tenant's application is dismissed.

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: September 25, 2015

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Residential Tenancy Branch

