



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDC; OLC; PSF; SS

### **Introduction**

This is the Tenant's Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement; an Order that the Landlord comply with the Act and provide services or facilities; and an Order for substituted service.

The parties gave affirmed testimony. The Hearing process was described and the parties given an opportunity to ask questions about the process.

The Tenant testified that he mailed the Notice of Hearing documents to the Landlord, by registered mail, on November 4, 2015. He stated that the Landlord did not pick up the package from Canada Post, so he amended his Application to include the amount he is seeking and mailed the amended Notice of Hearing package to the Landlord by registered mail on November 23, 2015. The Tenant provided the tracking number for the registered documents.

The Landlord stated that he picked up the second package at the post office on December 4, 2015, but there was no Notice of Hearing in the package, so he phoned the Residential Tenancy Branch and was advised of the dial-in information.

The Landlord stated that the Tenant lives in a trailer on the Landlord's property and pays rent to the Landlord. He stated that he received notification from the City on November 24, 2015, that the Tenant and other occupants must vacate the property because it was contrary to a municipal bylaw. The Landlord stated that he faxed documentary evidence to the Residential Tenancy Branch and gave the Tenant a copy "this morning". I advised the Landlord that I had not received any documents and that his evidence is late.

The Tenant testified that the Landlord cut off his water and electricity supply on November 1, 2015. The Landlord stated that he cut it off because he could not afford the utility bill since the Tenant stopped paying rent.

The Tenant stated that he and the Landlord share a mail box and that the Landlord is keeping the Tenant's mail.

I adjourned the matter to December 14, 2015, at 11:00 a.m. and ordered the Landlord to deliver the Tenant's mail to the Tenant, in hand, by 5:00 p.m., December 11, 2015. I also told the Landlord that Section 21 of the Act prohibits termination or restriction of essential services such as electricity and water.

The matter was reconvened on December 14, 2015. Both parties signed into the teleconference and gave affirmed testimony.

It was determined that the Landlord provided the Tenant with his mail on December 11, 2015. It was also determined that the Landlord reconnected the Tenant's electricity and water on December 11, 2015.

I advised the parties that the Act defines "manufactured home" and "manufactured home park" as follows:

**"manufactured home"** means a structure, whether or not ordinarily equipped with wheels, that is

(a) designed, constructed or manufactured to be moved from one place to another by being towed or carried, and

(b) used or intended to be used as living accommodation;

**"manufactured home park"** means the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located;

I explained to the parties that I find that the Tenant's trailer is a "manufactured home" as defined by the Act, and that the Landlord's property is a "manufactured home park" as defined by the Act. The land use may not comply with Municipal bylaws; however, I find that the Act has jurisdiction over this tenancy.

The Tenant's power and water have been restored and therefore there is no need for me to Order the Landlord to comply with Section 21 of the Act. The Tenant made no request for substituted service of documents upon the Landlord and therefore this portion of his Application is dismissed.

### **Issue to be Decided**

Is the Tenant entitled to a monetary award pursuant to the provisions of Section 60 of the Act?

### **Background and Evidence**

Rent is \$500.00 per month and includes basic cable and water. Contrary to the Act, the Tenant paid a "security deposit" in the amount of \$250.00 to the Landlord. The electricity bill is in the Landlord's name. The Landlord testified that he pays \$50.00 of the electricity bill every billing cycle (2 months) and expects the other tenants to work out between themselves who pays what portion of the remainder of the bill. The Tenant stated that this method is unfair.

The Tenant gave the following testimony:

The Tenant testified that he had to rent a generator on November 2, 2015, when the Landlord disconnected his water and power. He stated that the cost to rent the generator was \$20.00 a day. The generator was returned on December 12, 2015. The Tenant provided a copy of the invoice. The Tenant stated that the generator was noisy and caused pollution and high moisture in the trailer, which affected his quiet enjoyment of his home. The Tenant provided receipts for oil and fuel for the generator.

The Tenant stated that he had no heat because the propane furnace fan was not powered by the generator. The Tenant purchased a battery for the propane heater fan. The Tenant provided receipts for the cost of the battery and propane.

The Tenant stated that he dined out because he did not have electricity to power his stove. He provided 8 receipts for dinners purchased while his electricity was cut off.

The Tenant testified that the Landlord made a false bylaw complaint about his dog. He stated that the bylaw officer determined that it had no merit because his dog was dead.

The Tenant seeks compensation, calculated as follows:

Costs associated with lack of power and water:

Dinners out	\$61.25
Costs for motor oil and fuel for generator	\$169.86
Propane for furnace/heater fan/heater stove	\$34.62
Connectors for battery	\$7.48
Battery	\$111.99
Rental of generator (40 days @ \$20.00)	\$800.00

Compensation for loss of quiet enjoyment:

Loss of power and water services (41 days @ 10.00 per day)	\$410.00
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False bylaw complaint (amount of "false ticket")	\$800.00
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Aggravated damages:

For Landlord disconnecting power and water	<u>\$2,500.00</u>
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TOTAL CLAIM	\$4,918.48
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The Landlord gave the following testimony:

The Landlord stated that the Tenant complained that the electricity bill for February, 2015, was too high and that he had a friend with a fifth wheel who wanted to move onto the property. The Landlord met with the Tenant's friend and agreed that his friend could move in. The Tenant's friend plugged into the Tenant's pad and paid \$300.00 a month rent to the Landlord. The Tenant's friend was "loudmouthed" and used foul language around the Landlord's 10 year old daughter, so the Landlord asked him to move out. The Tenant brought in another friend, who also agreed to split the additional electricity charge (over and above the \$50.00 the Landlord paid) between the Tenant and his friend. This second friend gave \$75.00 a month for electricity and paid his share to the end of August, 2015, when he moved out. The Tenant's friend did not pay rent for the month of August, 2015.

The Landlord stated that the Tenant as two dogs and there "have been 3 dog attacks" on the Landlord's dog during the past year. He stated that the Tenant does not keep his dogs leashed and that in October, 2015, he heard "weird yelping" outside. When he went to investigate, the Tenant's female dog had the Landlord's dog by the neck and was ripping it apart. The Landlord stated that he got the Tenant's dog off, and the dog started to move towards his daughter. The Landlord testified that he was able to scare the dogs back to the Tenant's house. He called "animal control", who came out to investigate on November 3, 2015, but the Tenant's dogs had "disappeared" by November 1, 2015.

The Landlord testified that the Tenant did not pay rent since October, 2015. He stated that he turned off the poser to the Tenant's home on November 1, 2015, but turned it back on December 11, 2015. The Landlord stated that the Tenant called the police on December 11, 2015, to arrest the Landlord for holding back the Tenant's mail. The Landlord told the police that he was not holding the Tenant's mail and that the Tenant could pick it up any time. He advised the police that I had ordered him to deliver the Tenant's mail to the Tenant. The police and the Landlord went together to give the Tenant his mail.

## **Analysis**

This is the Tenant's claim for damage or loss under the Act and therefore the Tenant has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Landlord pay for the loss requires the Tenant to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, I find that the Tenant has provided sufficient evidence to prove that the Landlord did not comply with Section 21 of the Act, and that he suffered a loss as a result of the Landlord's actions. I find that his claim for his costs associated with loss of power and water was established and award the Tenant **\$1,185.20** for this portion of his claim.

With respect to the Tenant's claim for loss of quiet enjoyment, I find that he did not provide sufficient evidence with respect to the "false ticket", for the following reasons:

1. The Dispute Resolution process is for resolving disputes between landlords and tenants relating to rights, obligations and prohibitions under the Act or tenancy agreement. I find that this portion of the Tenant's claim does not fall within the jurisdiction of the Act.

2. The Tenant did not suffer a monetary loss (he did not pay the \$800.00 bylaw fine), and I find that there was insufficient evidence that the Tenant's dog did not fight with the Landlord's dog.
3. I find that even if the Tenant suffered loss of quiet enjoyment due to the Landlord's allegations about his dog, there is insufficient evidence of the actual amount required to compensate the Tenant for this portion of his claim.

I accept that the Tenant is entitled to compensation for loss of quiet enjoyment as a result of the Landlord cutting off his power and water for 41 days. The Tenant seeks compensation in the amount of \$10.00 per day, which I find to be a reasonable amount especially considering the time of the year. The Tenant was without a reliable source of power, heat and water for 41 days in the late fall when temperatures are cold. This portion of his claim is allowed in the amount of **\$410.00**.

The Tenant has also applied for aggravated damages. Residential Tenancy Policy Guideline 16 provides, in part:

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

☐ The damage must be caused by the deliberate or negligent actor omission of the wrongdoer.

☐ The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.

☐ They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. **They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses.** Aggravated damages are rarely awarded and must specifically be sought.

**An arbitrator does not have the authority to award punitive damages, to punish the respondent.**

[my emphasis added]

In this case, I find that the award provided to the Tenant for loss of peaceful enjoyment is sufficient compensation. Therefore, this portion of the Tenant's claim is dismissed.

There was merit in the Tenant's Application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

### **Conclusion**

I hereby grant the Tenant a Monetary Order in the amount of **\$1,645.20** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: January 04, 2016

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Residential Tenancy Branch

