



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SILVER CAMPSITES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      O F F

### Introduction

This hearing convened on January 19, 2016 to hear the matters pertaining to the Landlord's application for Dispute Resolution. The hearing time expired after 74 minutes and the hearing was adjourned. An Interim Decision was issued on January 20, 2016 and the matters reconvened on March 3, 2016 for 64 minutes. Accordingly, this Decision must be read in conjunction with my January 20, 2016 Interim Decision.

Rules of Procedure 3.17 provides the arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

The Tenants' 28 page faxed evidence submission had been placed on the RTB hearing file prior to the March 3, 2016 reconvened hearing. The Landlords did not raise any concerns or issues regarding my acceptance of the Tenants' late evidence during the January 19, 2016 hearing. Therefore, I accepted the Landlord's and Tenants' relevant documentary submissions as evidence for these matters.

The Tenants were granted leave to have their builder attend the reconvened hearing as a witness. However, at the outset of the reconvened hearing the Tenant submitted that he was unable to arrange for his builder to attend the hearing.

As stated in the Interim Decision, all submissions on behalf of the Tenants were presented by the male Tenant. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise. It should also be noted that all conversations referred to in this Decision as being between the Landlord(s) and the Tenant, were conversations between the Landlord(s) and the male Tenant, unless otherwise stated.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Tenants breached the Park rules?
2. Have the Tenants breached section 40(1)(d) and 40(1)(g) of the *Manufactured Home Park Tenancy Act* (the Act)?
3. Should the Tenants be ordered to remove the Addition they built?

Background and Evidence

**Undisputed Evidence**

The Tenants purchased their manufactured home (the Home) and on October 31, 2007 the Tenants entered into a written tenancy agreement. The tenancy agreement was a month to month tenancy for the manufactured home park site (the Site) which was effective November 1, 2007. As per the tenancy agreement rent of \$316.00 was payable on or before the first of each month. Rent was subsequently increased to \$370.00 per month.

From the Tenancy Agreement section 21 indicates there were 3 addendums attached to the tenancy agreement listed as follows: Site map; Park Rules and Regulations; and the Government Schedule.

A copy of the two page Rules and Regulations was submitted into evidence and was signed by each Tenant on October 31, 2007. The Rules and Regulations include, in part, the following:

1. MOBILE HOME SITE OF EACH TENANT. *Mobile Homes and sites shall be attractively maintained by the Tenant and shall comply with all applicable laws, ordinances and regulations of the Province, District, and Municipality as from time to time amended. Any additions or alterations to the mobile home require a building permit and the written approval from the landlord before commencement of any work. No alterations or changes by the Tenant to the site ground level are permitted.*

[Reproduced as written]

The manufactured home park (the Park) was described as being located on 35 acres of land; 187 Sites; and is owned by 5 owners. Two of the owners have since retired.

In the spring of 2014 the Tenant approached one of the Landlords, D.C., and verbally requested permission to enclose his deck. The Landlord granted the Tenant verbal permission.

On July 31, 2014 a Municipal Building Inspector, R.H. (the Landlord's Witness), attended the Site and issued the Tenants a document titled "Inspection Notice", as submitted into evidence. That Notice instructed the Tenants to apply for a B.P. (building permit) and to go into the Municipal Office at 8:00 a.m. on August 1, 2014. The Notice also stated that no inspection was done at that time.

The Tenant attended the Municipal Office on August 1, 2014 at 8:00 a.m. and as requested, the Tenant provided the Municipality with copies of their drawings for their Addition. The Building Inspector informed the Tenant that their documents would be reviewed by her manager and the Tenants would be sent further instructions in the mail.

On October 20, 2014 the Municipality sent the Landlord and the Tenants a letter informing both parties the Addition (construction) that was completed on the Tenants' site was "Illegal Construction" as follows:

*...it has been determined that illegal construction has been completed without obtaining a building permit and the construction does not appear to meet the minimum standards of the British Columbia Building Code (BCBC) 2012. As well, we also believe the CSA Z=240 mobile home certification has been invalidated as a result of the large doorway that has been cut through for access to the new addition.*

[Reproduced as written at p 1 para 1line 4]

*In light of the illegal construction you are now required to submit a retrospective building permit in order to remove the illegal construction to bring the property into compliance with the applicable municipal bylaws and the BCBC 2012.*

[Reproduced as written at p 1 para 3]

On September 29, 2015 the Municipality issued the Landlord an official Order which included, in part, as follows:

***In accordance with the provisions of the Building Bylaw, you are ORDERED to remove the addition by Decision 3, 2015. A Building Permit is required for the removal and the necessary repairs to the mobile home after.***

*Failure to comply with the requirements of this order will result in the Municipality ticketing the owners of the mobile home park under the Municipal Ticket Information Bylaw, laying charges under the Zoning and/or Building Bylaws, and/or taking additional legal action to bring the property into compliance. Upon conviction of an offence under the Building Bylaw you are liable to:*

- “(i) a fine not exceeding \$10,000.00 plus the cost of prosecution, or*
- (ii) imprisonment for at most 6 months.”*

[Reproduced as written p 1 para 2, 3]

### **Landlord's Submissions**

The Landlord's witness (the Witness) testified she is a building inspector and has been employed by the Municipality for ten years. She possesses a Level III designation which is the highest designation level for building inspectors.

The Witness submitted she was scheduled to attend the Site at the end of July 2014. She stated that when she attended the site she saw the project, (Addition / Illegal Construction) which appeared to be a deck that had been enclosed and turned into living space. She asserted the building project was approximately 98% complete when she first attended. She said she approached a man at the site (the Tenant), who was standing with another individual, and asked if the Tenant had a building permit. She submitted the Tenant told her he had talked with the owners and “all was fine”. The Building Inspector stated that at point she informed the Tenant that he was required to attend a meeting the next morning at the Municipal Office and requested that he bring in drawings and pictures of his construction.

The Witness stated she met with the Tenant the next morning, August 1, 2014, as requested. She spoke with her supervisor(s) and informed the Tenant they could not issue a building permit at that time. She ended the meeting and told the Tenant someone from the Municipality would be in contact with him. The Witness stated the file was left with her supervisor and their solicitor and her involvement with that file ended at that point.

The Tenant was given the opportunity to question the Witness. He asked the Witness if she had actually inspected the Addition to which she responded “No”.

The Landlord, D.C., submitted he has been employed in the maintenance department at the Park since 1983 where he was involved in dealing with residents regarding projects and Site inspections. D.C. indicated he has been a Landlord of the Park since 1997.

D.C. confirmed the Tenant approached him to request permission to close in his deck. D.C. testified the Tenant was given verbal permission to close in his deck as long as it was not made larger than the existing deck. D.C. argued that once the Tenant received the Landlord's permission it was up to the Tenant to acquire all required building permits.

D.C. submitted it was not up to the Landlord to monitor or supervise the Tenants' building project. In addition, D.C. argued it was not up to the Landlord to follow up with the Municipality to find out if building permits were issued. D.C. asserted it was up to the Home owner to obtain all required permits for any and all projects the Tenants engage in.

D.C. stated that at the request of the Landlord J.R., he attended the Site to check on the construction as J.R. had received a complaint about the size of the project. D.C. stated that when he approached the Tenant and asked what he was building the Tenant started to get agitated so they left.

J.P., the Landlord's caretaker, testified that he has been employed with the Landlord since 2012. He submitted that his duties at the Park involve the following: garbage pickup; brush removal; delivery of gravel and sand inside the Park; and general work that needs to be done to make sure everything in the Park is okay.

J.P. testified that in the spring of 2014 he was with D.C. when the Tenant approached him and asked permission to close in his deck. J.P. asserted he heard D.C. tell the Tenant "yes as long as it does not exceed what is there now."

J.P. stated he attended the Site and met with the Tenant and another person who appeared to be taking measurements. J.P. stated he asked the Tenant if he had a building permit and requested to see it. J.P. testified the Tenant refused to show him a permit and told J.P. it was none of his business.

### **Tenants' Submissions**

The Tenant testified he had obtained the Landlord's verbal permission prior to completing the renovations. The Tenant stated he did not apply for a building permit

prior to completing the Addition or any of the renovations. He argued that he had not required a permit when he had completed previous renovations such as when he replaced the windows, siding, and the roof of his Home.

The majority the Tenants' submissions focused on arguments pertaining to how the Municipality did not follow through with a site inspection or how the Municipality had made mistakes in their letter(s). The Tenant insisted he was of the opinion that his construction met Municipal By-laws and the Addition was within the setbacks.

At that point I explained to both parties the issues that fell within the jurisdiction of the *Act*. I then instructed the Tenant to present evidence that was relevant to the matters that fell within the jurisdiction of the *Act* such as compliance with the tenancy agreement and/or Park rules. At that point the Tenant requested a short recess in order to review his submissions. A recess was granted and upon returning the Tenant continued his submissions.

The Tenant submitted that in his opinion the Landlord is responsible to acquire the building permit and for his Addition because the Landlord gave him permission. The Tenant stated the Landlord had sold and delivered materials to him, such as stone; therefore, he argued the Landlord definitely had knowledge of the structure he was building.

The Tenant testified he was not in breach of section 40(1)(d) of the *Act* and stated the Landlords' claims are untrue. He argued the Municipal Order was issued against the Landlord so he argued that ultimately it is the Landlord who is responsible.

The Tenant affirmed the copies of the tenancy agreement and Park Rules submitted into evidence were copies of the documents they signed at the start of their tenancy.

The Tenant asserted that no one ever asked him if he had permits. The Tenant stated he has never lived in a Park before and he did not know he was required to have a building permit. He said he simply went along with how the Landlord ran the place so he asked for verbal permission and received it before he began the construction.

The Tenant argued the Municipality did not issue him a stop work order. He confirmed receipt of the letter issued by the Municipality on October 2014 advising him about violations. He was insistent the Landlord bears the responsibility to deal with the Municipality and to compensate him if his Addition has to be removed.

The Tenant submitted he hired a carpenter to assist him with doing the framing and woodwork. Upon further clarification the Tenant stated he did not hire licensed contractors to assist him with any of the construction. Rather, he simply hired people who had advertisements in the local paper or in the neighborhood and none of them ever asked him if he had a permit.

The Tenant did not dispute the caretaker's (J.P.) testimony directly. He simply argued, at random, that no one ever asked him if he had a permit.

### **Final Submissions**

The Landlord submitted they requested the Tenant remove the Addition /Illegal Construction and the Tenant has failed to do so which has resulted in the Municipality issuing the official Order. The Landlord argued the Municipality has taken steps to issue the "formal Order" which puts the Landlord in a position where they may be fined or face jail time due to the Tenants' breach of failing to obtain a building permit.

The Landlord argued the Addition/Illegal Construction built by the Tenants was in excess of what was verbally agreed upon. Also, it was the Tenants' responsibility to obtain the building permit as they were doing the building and are the owners of the Home. They argued it was not the Landlord doing the building so the Landlords were not required to get the permit. The Landlord has requested the Tenants remove the structure and the Tenants have failed to do so.

The Landlord stated they are not seeking an Order of Possession at this time. They are however, seeking an Order compelling the Tenants to remove the Addition/Illegal Construction as soon as possible. In addition, the Landlord is seeking findings that the Tenants are in breach of Section 40(1)(d) and (g) of the *Act* and in breach of the agreement.

### **Analysis**

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 13 of the *Act* stipulates, in part, a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004 and that tenancy agreement must comply with any requirements prescribed in the regulations.

Section 32 of the *Act* provides as follows:

(1) In accordance with the regulations, a park committee, or, if there is no park committee, the landlord may establish, change or repeal rules for governing the operation of the manufactured home park.

(2) Rules referred to in subsection (1) must not be inconsistent with this Act or the regulations or any other enactment that applies to a manufactured home park.

(3) Rules established in accordance with this section apply in the manufactured home park of the park committee or landlord, as applicable.

(4) If a park rule established under this section is inconsistent or conflicts with a term in a tenancy agreement that was entered into before the rule was established, the park rule prevails to the extent of the inconsistency or conflict.

Upon review of the documents submitted into evidence I find the tenancy agreement to be issued in compliance with section 13 of the *Act*. I further find the Rules and Regulations, which the Tenants signed receipt of on October 31, 2007, to be in compliance with section 32 of the *Act*.

Section 40(1)(g) of the *Act* provides a landlord may end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

As indicated above, I found the Tenants breached a Park Rule / Regulation. A Park Rule and/or a Regulation are not material terms of a tenancy agreement. Therefore, I do not accept the Landlord's submission that the Tenants were in breach of section 40(1)(g) of the *Act*.

Part 4 Section 30(3) of the Regulations stipulates, in part, that a rule is enforceable against a tenant if the rule applies to all tenants in a fair manner; the rule is clear enough that a reasonable tenant can understand how to comply with the rule; notice of the rule is given to the tenant in accordance with the section 29; and the rule does not change a material term of the tenancy agreement.

Section 55 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.



Section 55(3) of the *Act* provides the director may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement.

As listed above, the Park Rules stipulated the Tenants were required to comply with all applicable laws (Provincial, District, and Municipal). The Rules also stipulated any additions or alterations to the mobile home required a building permit and the written approval from the Landlord.

Estoppel is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial. The rationale behind estoppel is to prevent injustice owing to inconsistency.

I accept the Tenants' undisputed submission that the Landlord(s) had established a pattern of not requiring tenants to obtain written permission before engaging in projects or activities on the individual sites. I further accept the Landlord had been aware that the scope of the Tenants' project/Addition was developing into something more than simply enclosing a pre-existing deck as they had been at the Site delivering materials.

Based on the above, I conclude the Landlord was estopped from enforcing the Park Rule that required the Tenants to obtain the Landlord's written permission prior to embarking on building his Addition. That being said, I find the Park Rule which required the Tenant to obtain a building permit remained in full force and effect, as a Landlord has no authority to enforce or contract out of a Municipal By-Law.

Based on the totality of the evidence before me I do not accept the Tenant's submission that he did not know he was required to obtain permit(s) prior to building the Addition to his Home. Rather, I find there was sufficient evidence to prove the Tenants had been clearly informed of the requirement to obtain permits, as stipulated in the Park Rules and Regulations, pursuant to section 55(2) of the *Act*.

Notwithstanding the Tenant's undisputed submissions that he had the Landlord's verbal permission; that his drawings are a better reflection of the positioning of his Addition on the Site; and/or the Building Inspector did not complete an actual inspection of the Addition; the undisputed facts were the Tenants failed to obtain a building permit prior to commencement of building the Addition to their Home, as required by the Park Rules and Regulations and as required by Municipal By-laws. In addition, there was sufficient evidence to prove the Addition constructed by the Tenants was in breach of zoning and building bylaws which makes it Illegal Construction.

I accept the undisputed submission of the Landlord that he agreed to the Tenant's request "to enclose the deck" with the provision that the Tenant did not alter the size of the deck. I further accept the Landlord's submission that his verbal agreement with the Tenant did not exclude the Tenant from the requirement to obtain a building permit.

I considered that it was the Tenant who was instructed to attend the Municipal office on August 1, 2014 and told to bring in his drawings of the Addition and not the Landlord. That supports the fact that it was the Tenants' building project and not the Landlord's project. Notwithstanding the Tenant's submission that he was not issued a stop work order, there was sufficient evidence to prove the building project was almost complete when the building inspector attended; therefore a stop work order at that point would have been moot.

The Tenant's submission that the Landlord knew or ought to have seen the size of the Tenant's building project because the Tenant had purchased stone which was delivered to the Site by the Landlord, was irrefutable. That being said, I do not accept the Tenant's submission it was the Landlord's responsibility to obtain the building permit because the Landlord owns the land and seen the size of the Tenant's Addition. Rather, I find the responsibility to obtain the building permit falls to the Tenants as they own the Home and were the ones building the Addition to the Home, pursuant to section 55(2) of the *Act*.

Section 40(1)(d) of the *Act* provides a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted in the manufactured home park by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property; has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the manufactured home park; or has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

Section 26(3) of the *Act* stipulates a tenant must repair damage to the manufactured home site or common areas that is caused by the actions or neglect of the tenant or a person permitted in the manufactured home park by the tenant.

Regarding the letter issued from the Municipality on October 20, 2014 addressed to the Landlord and Tenants, notwithstanding the typing errors listing incorrect dates, that letter informed the parties that the Tenant's Addition was "Illegal Construction" and was in breach of Municipal by-laws. That letter further advised that a building permit was required in order to remove the illegal construction and to bring the property (the Site) into compliance with the applicable Municipal bylaws.

Based on the above, I find there was sufficient evidence to prove the Tenants have engaged in illegal activity that has caused or is likely to jeopardize a lawful right or interest of another occupant or the landlord. Based on the aforementioned, the Tenants' actions may be grounds for the Landlord to issue the Tenants a 1 Month Notice to end tenancy for cause, pursuant to section 40(1)(d) of the *Act*.

I accept the Tenants' submission that at the time of this hearing they had not breached an official government order. I make this finding, in part, as the letters previously issued to the Tenants from the Municipality were directions and not official orders.

Furthermore, I accept the September 29, 2015 Municipal Order was issued to the Landlord and not the Tenants. That being said, the fact that the Municipal Order was issued to the Landlord as property owner does not excuse or exclude the Tenants from their obligations regarding the need to obtain building permit(s) for the Addition they constructed attached to the Home, as the Tenants own the Home.

After consideration of the foregoing, I find the Tenants bear the responsibility to obtain the Municipal building permit for removal of the Addition /Illegal Construction, as previously instructed by the Municipality. In addition, I find it is the Tenants' responsibility to fully deconstruct the Addition /Illegal Construction in accordance with Municipal bylaws and section 26(3) of the *Act*. Accordingly, I hereby **Order** the Tenants to obtain all required permits and remove the Addition/Illegal Construction no later than **May 31, 2016**, pursuant to section 55(3) of the *Act*.

I must caution the Tenants that if they fail to comply with my Order, they will be in breach of a Government Order. In addition, I caution the Tenants they may be subject to administrative penalties if they fail to comply with my Order, pursuant to section 86.1 (1)(b) of the *Act*. Furthermore, if the Tenants fail to comply with my Order causing another party to incur costs in obtaining permit(s) and carrying out the removal of the Addition / Illegal Construction, those costs will be fully recoverable from the Tenants.

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 Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 65(1) of the *Act*. The Landlord has been issued a

Monetary Order in the amount of **\$50.00** which may be enforced through Small Claims Court after service to the Tenants.

Conclusion

The Landlord was successful with their application and was awarded recovery of their filing fee. The Tenants were ordered to obtain all required permits and remove the Addition/Illegal Construction no later than **May 31, 2016**.

This decision is final, legally binding, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 08, 2016

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Residential Tenancy Branch

