



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on November 9, 2015. The Tenants initially filed seeking a \$20,000.00 Monetary Order regarding a tanning bed. On November 18, 2015 the Tenants submitted a second copy of their Application for Dispute Resolution indicating they were seeking \$15,839.05 which included the following added statement "Cost of moving mobile home".

The hearing was conducted via teleconference and was attended by the Landlord, and both Tenants. Each person provided affirmed testimony, agreeing to tell the truth. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

### Issue(s) to be Decided

1. Have the Tenants' applications been served upon the Landlord in accordance with the *Act*?
2. Have the parties agreed upon access to the Tenants' tanning bed?

### Background and Evidence

Upon clarification of service and receipt of the Application for Dispute Resolution; hearing documents; and evidence; the Landlord testified he received two separate applications which he found inside his mailbox. The first application named the Landlord as the respondent and did not provide a service address for the Tenants. The Landlord argued he was not able to serve his evidence upon the Tenants because they did not serve him a fully completed application.

The Landlord asserted the second application named G.P.P. as the respondent. He said he thinks that respondent may be the female Tenant's mother. The Landlord asserted both applications had the same file number so he was not sure which matter was being heard in this hearing.

The Tenants testified and confirmed they served the Landlord with copies of both applications and neither application listed the Tenants' address. The Tenants asserted they did not want the Landlord to know their address.

At this point in the hearing I informed the parties both Applications were incomplete and the two matters could not be heard in the same hearing as they had different respondents.

The Landlord requested that the matter involving the tanning bed be determined because he could not continue to store the tanning bed in shed on the manufactured home park site.

The Tenants submitted evidence of a previous Decision issued May 5, 2015 (as referenced on the front page of this Decision). The Tenants asserted the previous Arbitrator said the Landlord had to continue storing their tanning bed and he could not charge them rent.

From page 1 of the May 5, 2015 Decision the Arbitrator wrote as follows:

*At the hearing, the tenant advised that the landlord would not permit her to remove a tanning bed from his shed. The landlord initially vehemently denied any knowledge of the bed, but at the end of the hearing acknowledged that he was aware the bed was locked in the shed and said he would not release it to the tenants until they paid rent for use of the shed. I advised the landlord that he did not have a legal right to keep the bed or to charge the tenants rent for use of the shed. The landlord indicated that he would allow the male tenant to access the shed and I encouraged the parties to work cooperatively to avoid the need for a further hearing.*

[Reproduced as written]

The Tenants submitted they did not contact the Landlord until September 29, 2015 to make arrangements to pick up their tanning bed from the shed which was located on the manufactured home park site which they used to occupy. The Tenants asserted it was during the September 29, 2015 telephone conversation that the Landlord told them he had moved the shed and discarded their tanning bed. They now seek monetary compensation for their tanning bed.

I asked the Tenants why they waited almost five months before trying to retrieve the bed. The Tenants responded saying they did not think things were done right by the Landlord. They argued they had to pay to move their manufactured home and were concerned having to deal with the Landlord to pick up their tanning bed.

The Landlord did not dispute the Tenants' submission that he told them over the telephone that he had discarded the tanning bed. Rather, he confirmed the tanning bed

is still located in the same shed. The Landlord stated he has never touched the tanning bed and it is still exactly how the Tenants left it. He wished to schedule a time that the male Tenant could pick up the bed so he could be done with this matter. He stated he would not meet with the female Tenant given the history. The Landlord submitted he has never had a problem with the male Tenant and would like him to pick up the bed without the presence of the female Tenant.

When trying to determine the date and time when the Tenants were available to pick up the tanning bed the female Tenant began arguing her concerns that the tanning bed may have been tampered with and no longer in working condition. She asserted she did not trust the Landlord as he has constantly lied to them causing them to suffer a loss in having to move their manufactured home.

The parties were able to agree that the male Tenant would attend the shed on Saturday June 4, 2016 at 1:00 p.m. to pick up the tanning bed. In addition, the male Tenant might bring someone to assist him in loading the tanning bed into the vehicle and the female Tenant would **not** attend the manufactured home site with them.

The Landlord requested that his mailing address be recorded on the front page of this Decision so the Tenants could not say they were not informed of his mailing address.

### Analysis

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

**Section 7** of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 52(2) of the *Act* stipulates that an application for dispute resolution must be in the applicable approved form; include full particulars of the dispute that is to be the subject of the dispute resolution proceedings; and be accompanied by the fee prescribed in the regulations.

Section 52(5)(c) of the *Act* provides that the director may refuse to accept an application for dispute resolution if the application does not comply with subsection (2).

The undisputed evidence was the Tenants did not serve the Landlord with properly completed applications for dispute resolution, as they did not provide the Landlord with a proper service address for him to send his responding evidence, as required by section 52 of the *Act*. Accordingly, I declined to hear the matters pertaining to the Tenants' application for compensation relating to the move of their manufactured home.

Notwithstanding the Tenants' serving an improper application to the Landlord that related to their claim for compensation for the tanning bed, the Landlord wished to proceed with determining the disbursement of the tanning bed.

It is irrefutable that the landlord/tenant relationship with these parties has escalated to the point of being acrimonious and confrontational. As a result, the credibility of both parties is suspect given the behaviours displayed and described to me during this hearing.

As stated above, the parties attended a previous dispute resolution on May 5, 2015 where the Arbitrator informed the parties the Landlord had no legal right to prevent the Tenants from accessing their tanning bed. The Tenants then waited almost 5 months before attempting to pick up the tanning bed, a delay which I find was intentional to cause hardship upon the Landlord, a vexatious act. When the Tenants finally contacted the Landlord to arrange to pick up their bed, the Landlord said he discarded the tanning bed, which I find to be equally vexatious, as the Landlord appeared at this hearing stating the tanning bed had not been touch and was still in the shed.

After consideration of the above, I find the Tenants failed to mitigate or minimize any loss incurred relating to the tanning bed, as required by section 7 of the *Act*. I make this finding in part due to the <5 month delay in contacting the Landlord to try and retrieve the tanning bed. In addition, the credibility of both parties is questionable. Accordingly, I dismiss the Tenants' claim of \$20,000.00 for the tanning bed, without leave to reapply.

Section 55(3) of the *Act* stipulates that 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 and an order that this *Act* applies.

Part 6, section 35(1) of the Regulations stipulates that a landlord must store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the end date of the tenancy or the date of removal from the manufactured home part site by the landlord.

The parties agreed the male Tenant would attend the shed on Saturday June 4, 2016 at 1:00 p.m. to pick up the tanning bed. The Landlord would have the shed unlocked prior to his arrival. The female Tenant would **not** attend the manufactured home site.

In the event the male Tenant does not attend the manufactured home park site by 1:15 p.m. on June 4, 2016 I hereby Order the Landlord may discard of the tanning bed in a manner of his choosing, as the Landlord has already stored the tanning bed for more than 60 days, as required by part 6 of the Regulation.

Conclusion

I declined to hear the matters pertaining to the Tenants' application relating to the move of the manufactured home. The Tenants' application for monetary compensation relating to their tanning bed was dismissed without leave to reapply. The parties mutually agreed upon a date and time when the male Tenant would pick up their tanning bed from the manufactured home park site.

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 *Manufactured Home Park Tenancy Act*.

Dated: June 03, 2016

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Residential Tenancy Branch