



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0730751 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, OLC, PSF, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Manufactured Home Park Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; for an Order for the landlord to provide services or facilities required by law; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*;

- Is the tenant entitled to an Order for the landlord to provide services or facilities required by law?

### Background and Evidence

The parties agreed that this month to month tenancy started on April 01, 2012. Pad rent for this site is currently \$307.00 per month, due on the 1<sup>st</sup> of each month.

The tenant testified that there is a clause in the addendum to the tenancy agreement, G3, that states “when space is available, campers, boats and small trailers, motor homes etc. are to be stored in the designated storage area. This will be on a first come first served basis. When space is not available and does not meet tenant’s satisfaction, it will be the tenant’s responsibility to find space off the park property at his/hers expense”.

The tenant testified that he had a motor home and boat stored in this designated storage space at the landlord’s request. The tenant testified that he received a call from the landlord asking the tenant to remove his motor home and boat from the storage area. The tenant asked the landlord to put this in writing and then on June 06, 2016 he received a Notice from the landlord to remove his stored motor home and boat from the designated storage area by June 12, 2016.

The tenant testified that he complied with the landlord’s request and had put his motor home and boat in a storage unit. The tenant testified that he has since purchased some property and moved his boat to that location; however, as the motor home is a renovation project the tenant is working on, this cannot be moved to the tenant’s property as it is too far away for the tenant to work on it. The tenant testified that he has now put his motor home up for sale so that further storage costs are not incurred.

The tenant testified that as the motor home did not have working front brakes and only had storage insurance he had to have this towed from the storage site on the park to a covered storage facility. The tenant seeks to recover the costs for towing of \$112.03 and for the storage costs of \$15.00 per month for June and July, 2016. The tenant testified that he has given notice to terminate his storage unit as from the end of July as he is selling the motor home and can no longer afford the storage unit.

The tenant seeks an Order for the landlord to reinstate the designated storage area so the tenant can store his vehicle.

The landlord disputed the tenant's claims. The landlord testified that the designated storage area was originally an unused area of the park. When they visited the park in June, 2016 they found that the storage area was unkempt with old trailers and they decided to discontinue its use as storage for tenants and to use it to store the park maintenance equipment instead.

The landlord testified that G3 of the addendum clearly states "when space is available"; if the landlords no longer want to make this space available for the tenants' use then this is covered under that addendum and the park rules as the landlords want to use the space. All the tenants have complied and removed their vehicles. The landlord testified that they are entitled to change the park rules as on page one of the addendum it states that these park rules are subject to change by the landlord with two weeks written notice to the tenants.

The landlord testified that when the tenants first moved onto the park he did not buy this home because of the designated area as he had his motor home and boat stored elsewhere. When this term was included in the addendum it was to provide a free space for the tenants use to help them out but only when space was available.

The landlord disputed the tenant's claim for towing costs. The landlord testified that this is not the responsibility of the landlord if the tenant's motor home was not roadworthy or insured.

The landlord disputed the tenant's claims for storage. The landlord testified that they are entitled to change the park rules. The tenant had parked his vehicles on his own site and then moved them to the storage area. The storage unit costs claimed for by the tenant are for a covered area which is not comparable to the open storage area provided at the park.

The tenant testified that he did park his motor home and boat on his own site but it was the landlord who asked the tenant to move them to the designated storage area as the landlord did not want them parked on the tenant's site

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 21 of the *Act* which states:

#### **Terminating or restricting services or facilities**

- 21** (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the manufactured home site as a site for a manufactured home, or
  - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

From the evidence before me I must conclude that having designated storage space on the park is not an essential service; however, I find it was still a facility that the tenant enjoyed throughout his tenancy. The landlord agreed that notice was provided to the tenant in writing to withdraw this facility but it is clear that this was not 30 days' notice and only six days' notice was provided for the tenant to remove his motor home and boat from the storage area. Further to this the landlord has not given the tenant a rent reduction that is equivalent to the reduction in the value of the tenancy. I Order the landlord to ensure they comply with s. 21 the *Act* regarding any further withdrawal of services or facilities.

While the landlord argues that they have a right under the addendum to the tenancy agreement to change the park rules; rules cannot be changed if they then become contrary to the *Act*. The *Act* states that 30 days must be given and a rent reduction must be offered equivalent to the reduction in value of the tenancy; while I accept this area was a free area provided to the tenants it was still a designated area for the tenants to use as part of the addendum to the tenancy agreement.

The landlord also argues that the terms of G3 states that this area is provided when "space is available". I find this is an unclear term of the addendum. The landlord argues that this means that the storage space can be removed; however, the tenant read that it means when space is available on a first come first served basis with the other tenants use being taken into consideration. I find I agree with the tenant's interpretation of this section of the addendum as it does not clearly state that the landlord may withdraw this storage space if they want to use it for another use. I therefore find this is an unconscionable term of the addendum to the tenancy agreement.

However, s. 21(2) of the Act does not prevent the landlord from removing this facility from the tenants use as it is not considered to be an essential service, but the tenant must be compensated in the form of a rent reduction pursuant to s. 21(2)(b) of the *Act*.

The tenant has requested to recover his towing and storage costs; I find that it is not the landlord's responsibility that the motor home could not be driven away and had to be towed. Therefore this section of the tenant's claim for towing costs of \$112.03 is dismissed.

With regard to the tenant's claim for storage costs, as the tenant did not have the required 30 days written notice to find alternative storage that was comparable to the storage he enjoyed on the park at such short notice; I find the tenant is entitled to recover his storage costs for his motor home of \$630.00. I therefore issue the tenant with a Monetary Order for **\$630.00** pursuant to s.60 of the Act.

I dismiss the tenant's application to reinstate the designated storage area as this is not considered to be an essential service or facility.

I further find the tenant is entitled to a nominal rent reduction in accordance with s. 21(2)(b) of the *Act*. As this was a free storage space offered to the tenant I find it is difficult to determine an amount for which the tenancy has been devalued. Furthermore, as the tenant has stated that he is selling his motor home I find the amount of \$25.00 per month for the loss of the storage area is a fair and equitable amount. This will continue until such a time as the tenant's motor home is sold. The tenant must provide evidence to the landlord at the landlord's request, to show the sale of his motor home. At that time the rent will revert in the following month to \$307.00 per month.

Alternatively, the landlord may provide storage space to the tenant for his motor home and in that case the tenant will not be entitled to a rent reduction of \$25.00 per month.

As the tenant's claim has merit I find the tenant is entitled to recover his filing fee of **\$100.00** pursuant to s. 65(1) of the *Act*.

### Conclusion

I Order the landlord to comply with s. 21 of the *Act* if removing any further services or facilities.

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$730.00** comprised of storage fees and the filing fee. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The tenant may reduce his rent by \$25.00 per month for the loss of this storage facility until such a time as the tenant's motor home is sold and evidence provided to the landlord to confirm the sale or the landlord must provide storage space for the tenant's motor home as directed above.

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: July 25, 2016

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Residential Tenancy Branch