



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STONECLIFF PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      Landlord: MND, MNR, MNDC  
                              Tenant: MNDC, OLC, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for damage to the unit site or property, for damage or loss under the Act, the regulations or the tenancy agreement and for unpaid rent.

The Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for the Landlord to comply with the Act, regulations and tenancy agreement and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant was done by registered mail on July 15, 2016, in accordance with section 82 of the Act.

Service of the hearing documents by the Tenant to the Landlord was done by registered mail on June 24, 2016 in accordance with section 82 of the Act.

The Tenant and the Landlord confirmed that they had received the other party's hearing packages.

### Preliminary matter

The Tenant's Advocate said he service the Landlord an evidence package by registered mail and he wanted to confirm the Landlord had the evidence. The Landlord said they did not have the evidence package for the hearing but they may have received it in one of their offices. As the evidence package was serviced in accordance to section 81 of the Act the hearing proceeded with the evidence included.

### Issues to be Decided

#### Landlord:

1. Are there damages to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation for the damages and if so how much?
3. Are there damages or losses to the Landlord and if so how much?
4. Is the Landlord entitled to compensation for damage or loss and if so how much?
5. Is there unpaid rent and if so how much?
6. Is the Landlord entitled to unpaid rent and if so how much?

#### Tenant:

1. Are there damages or losses to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for loss or damage and if so how much?
3. Has the Landlord complied with the Act, the regulations and the tenancy agreement?

### Background and Evidence

This tenancy started in April, 2001 as a month to month tenancy. Rent was \$215.40 per month payable on the 1<sup>st</sup> day of each month.

The Tenant's Advocate opened his remarks by saying the Landlord decided to close the manufactured home park on August 31, 2015 and convert the park to a green space. The Tenant's Advocate said the Tenant was moved out of his home by the Bailiff and Police on December 9, 2015. The Tenant said he could not move his manufactured home because it was too old and the home would not survive a move. As well the Tenant said he could not afford to move anywhere else. The Tenant Advocate said the Tenant agrees that he was over holding from August 31, 2015 to December 9, 2015. The Tenant's Advocate said the Landlord issued a 12 Month Notice to End Tenancy for Conversion of a Manufactured Home Park dated August 20, 2014 with an effective vacancy date of August 31, 2015.

Further the Tenant's Advocate said the Tenant disagrees with all of the Landlord's claims as the Landlord has not started to convert the park to a green space in a reasonable period of time. Therefore the Landlord has not acted in good faith during the closing of the manufactured home park. The Tenant's Advocate said under section 44 (2) of the Act the Tenant is to be compensated an equivalent amount to 6 month's rent if the Landlord does not take steps to accomplish the stated purpose for ending the tenancy given on the Notice to End Tenancy. The Tenant's Advocate said they have submitted numerous photographs of the park and homes in the park that show no

progress has been made to convert the park to a green space. As well the Tenant's Advocate said it has been almost a year which if you refer to the Residential Tenancy Act is more than the reasonable period of time to take steps to convert the park to a green space. As a result the Tenant's Advocate said the Landlord has not complied with the Act and under section 44 (2). The Advocate said the Landlord should compensate the Tenant the equivalent of 6 month's rent in the amount of \$215.40 X 6 months = \$1,292.40. In addition the Advocate said if the Tenant is successful the Tenant should also be able to recover the \$100.00 filing fee from the Landlord.

The Tenant's Advocate continued to say the Landlord's application should not be successful as the Landlord has not converted the park to a green space, which may imply the Landlord has not acted in good faith. Further the Tenant's Advocate said the Tenant's application should be successful as the Landlord has not completed the reason for ending the tenancy and closing the manufactured home park.

The Landlord said they did not want to close the park but because of financial and operational reasons they could not continue to operate the park. The female Landlord said that some of the tenants in the park resisted upgrades to the park which made it impossible to continue operating the park. The Landlord said the infrastructure is old in the park and it had to be changed but the tenants resisted any upgrades to the park.

The Landlord continued to say that they have settled with 11 tenants and removed 11 manufactured homes from the park. As well the Landlord said they have legal advice that they must settlement with all the tenants of the park before they can start the conversion to a green space. The Landlord said this is because they cannot remove tenants' homes or belongs until they have settled with the tenants or have grounds to proceed with the green space conversion.

The Landlord continued to say their application is for the following monetary compensation:

1. Recover the Bailiff costs to remove the Tenant	\$ 1,414.86
2. Moving the Tenant's belonging	<del>\$3,308.14</del> \$2,249.00
(this amount was adjusted to \$2,249.00 as a result of the Landlord negotiating a lower actual price with the mover).	
3. Court costs for the writ of Possession	\$ 80.00
4. Unpaid rent for over holding August to December	\$ 482.03
5. Estimate of removal of home and clean up	\$ 7,000.00
6. Postage for the hearing	\$ 10.50
7. Less compensation owed to Tenant	<u>\$-2,584.80</u>
Total	<u>\$8,651.59</u>

The Landlord said that they included paid receipts for all their claims except #5 the moving and clean estimate and #4 the unpaid rent for the Tenant overholding. The Landlord said they included an estimate from the company doing the home removals and clean-up for each pad. The estimate for the Tenant's pad is \$7,000.00. Further the Landlord said they did not receive full rent payments for October in the amount of \$190.20, for November in the amount of \$215.40 and for part of December in the amount of \$76.43. This makes a total of unpaid rent or overholding in the amount of \$482.03.

The female Landlord said they have tried very hard to reduce the costs for the tenants of the park by negotiating with the companies doing the work. She said they have been successful in reducing the initial moving costs and the Landlord's hope to reduce the home moving estimate and the clean- up estimate. One of the male Landlord's H.K. said if the Landlord has any savings in the removal or clean- up costs those costs will be passed through to the tenants and to this Tenant.

The Tenant's Advocate said he has tried to reconcile the receipts the Landlord has submitted for the initial moving costs and he said he cannot understand the receipts.

The male Landlord R.B. said he agreed the receipts are difficult to reconcile as the work was done on a number of occasions and separate bills were issued. The male Tenant H.K. said the total original bill for the initial moving costs was \$53,000.00 but the Landlord negotiated the bill down to \$37,000.00. H.K. said he applied that cost savings ratio to the Tenant's original moving bill of \$3,308.14 to reduce it to \$2,249.00. The Landlord H.K. said the initial moving costs of \$37,000.00 are paid and he is requesting the Tenant's part of that bill of \$2,249.00 to be recovered.

The Tenant's Advocate said that if the Landlord cannot produce the exact bills for the Tenant then the Landlord has failed to prove his claim and the claim should be dismissed.

Further the Tenant's Advocate said the estimate for removing the home and clean- up of the sites is questionable as the Landlord has already said they cannot reconcile the initial moving costs. The Tenant's Advocate said the Tenant does not believe he owes this bill at all because the Landlord is not acting in good faith but if the Landlord is successful he has not proven this amount. The Advocate said this claim should be dismissed.

The Landlord said the estimate is what the company gave them and if the actual amount is lower they will return any savings on the costs to the tenants and to this Tenant.

The Tenant's Advocate continued to say the Landlord has not paid the Tenant the compensation of \$2,584.80 he is entitled to from the Notice to End Tenancy which is supported by a monetary Order. The Advocate said the Landlord should pay this to the Tenant and it is not an offset amount as the Landlord is claiming. The Advocate said

the Tenant has not registered the monetary Order in Provincial Court but they may do that.

The Landlord said they know that the Tenant and other remaining tenants will owe the Landlord for costs to move the homes and do clean up, therefore the Landlord retained the compensation owed the Tenant until this hearing. The Landlord thought the compensation amount would be an offset to the amounts owed to the Landlord if they are successful.

The Advocate said the Landlord has an Order to pay the Tenant \$2,584.80 and the Landlord should comply with that Order.

The Landlord said in closing that they did not plan to close the park, but issues between the tenants and the Landlord forced the closure. The Landlord said the Tenant has not complied with the Notice to End Tenancy and now the Landlord has and will incur costs to remove the Tenant's manufactured home and to clean up the site. Further the Tenant agrees he over held and the Landlord is requesting compensation for the time the Tenant over held. This compensation is for use and occupancy. Further the Landlord said they have acted in good faith and are taking steps to convert the park to a green space as they have moved 11 units out of the park and when they settle with the remaining tenants they will complete the conversion to a green space. The Landlord said they are following their lawyer advice and will move forward on the converting the manufactured home park to a green space as soon as they can.

The Tenant said in closing that he has been treated very badly by the Landlord. He cannot move his manufactured home because it is too old and he does not have the finances to move. The Landlord did not give him a tenancy agreement and he has had no financial offer to move out.

The Tenant's Advocate said in closing that the Tenant has a limited income so the Landlord should pay the Tenant the compensation owed and it is not an offset to the Landlord's costs.

### Analysis

The first issue is the Landlord's claim for over holding compensation from the Tenant for use and occupancy of the site or pad.

**Section 50 of the Act says:** (1) In this section:

**"new tenant"** means a tenant who has entered into a tenancy agreement in respect of a manufactured home site but who is

prevented from occupying the manufactured home site by an overholding tenant;

**"overholding tenant"** means a tenant who continues to occupy a manufactured home site after the tenant's tenancy is ended.

(2) The landlord must not take actual possession of a manufactured home site that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

**(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the manufactured home site after the tenancy is ended.**

(4) If a landlord is entitled to claim compensation from an overholding tenant under subsection (3) and a new tenant brings proceedings against the landlord to enforce his or her right to possess or occupy the manufactured home site that is occupied by the overholding tenant, the landlord may apply to add the overholding tenant as a party to the proceedings.

As the Tenant agrees that he was an overholding Tenant and the Act states the Tenant is responsible to pay the Landlord for use and occupancy of the site or pad when over holding. I find for the Landlord and award the Landlord compensation for the Tenant's use and occupancy of the pad for October, 2015 in the amount of \$190.20, for November, 2015 in the amount of \$215.40 and for December, 2015 in the amount of \$76.43. I award the Landlord a total of \$482.03 in compensation for the Tenant overholding on the site or pad.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

With regard to the Landlord's monetary claims for the Bailiff cost of \$1,414.86, moving costs of \$2,249.00 and the Court cost of \$80.00; I find the Landlord has proven an actual loss, I accept the Tenant caused these losses for the Landlord by not complying with the Notice to End Tenancy dated August 20, 2014 and the Landlord has verified the losses with receipts. With the initial moving costs the Landlord submitted an invoice

for \$3,308.14 and then reduced the claim to \$2,249.00 due to a reduction of the overall bill from \$53,000.00 to \$37,000.00. I accept the Landlord's explanation of the bill and the reduction based on the ratio of the total bill reduction; therefore I award the Landlord \$2,249.00 for initial moving costs for the Tenant. Further I accept the Landlord has tried to minimize their loss by negotiation a reduction in the initial moving costs. I award the Landlord \$3,743.86 for these 3 items.

With regard to the Landlord's claim of \$7,000.00 to remove the Tenant's manufactured home and to clean up the site, I have some concerns about this claim being based on an estimate. I do not disagree the Landlord will have a loss which is attributable to the Tenant not complying with the 12 Month Notice to End Tenancy for Conversion of a Manufactured Home Park dated August 20, 2014, but the Landlord has shown an ability to negotiate reductions in the initial invoices which is commendable. Further the Tenant's Advocate and one of the male Landlord's agreed the accounting process the Landlord is using is not reliable to easily prove the cost incurred by the Landlord for each individual tenant's site that requires the home to be removed and cleaned up. Consequently I am not prepared to award \$7,000.00 to the Landlord based on the estimate alone. I dismiss the Landlord's claim for the Tenant's home removal and clean up based on the estimated of \$7,000.00 submitted by the Landlord. I dismissed this claim with leave to reapply when the Landlord has the actual costs associated to remove the home and clean up the site.

Further the Landlord has applied to recover the postal costs incurred for the dispute hearing. These costs are associated with the hearing and not the tenancy therefore the postal costs are not eligible claims. I dismiss the postal claims of \$10.50.

In addition an Arbitrator has the ability under section 60 of the Act to order compensation to be paid to parties and this may include offsetting compensation if both parties are successful or partially successful in their claims. As a result I order the Tenant's previous award of \$2, 584.80 to be applied to the Landlord's award as follows:

Landlord's award:

1. Recover the Bailiff costs to remove the Tenant	\$ 1,414.86	
2. Moving the Tenant's belonging (this amount was adjusted to \$2,249.00 as a result of the Landlord negotiating a lower actual price with the mover).	<del>\$3,308.14</del> \$2,249.00	
3. Court costs for the writ of Possession	\$ 80.00	
4. Unpaid rent for over holding October to December	<u>\$ 482.03</u>	
Total		<u>\$4,225.89</u>
Less compensation owed to Tenant		<u>\$-2,584.80</u>
Total owing to Landlord from Tenant		<u>\$1,641.09</u>

With regard to the Tenant application for compensation under section 44 (2) of the Act for the Landlord not taking steps to complete the reasons on the Notice to End Tenancy dated August 20, 2014. I accept the testimony and evidence of the Landlord that until the issues of home removal and cleanup are resolved with each of the remaining tenants the Landlord is unable to commence and complete the conversion of the park to a green space. Consequently I dismiss the Tenant's application for compensation under section 44 (2) of the Act with leave to reapply if the Landlord does not complete the conversion of the park to a green space in a reasonable period of time after the tenant issues have been resolved.

As the Tenant was unsuccessful in this matter I order the Tenant to bear the \$100.00 cost of the filing fee for his application that he has already paid.

#### Conclusion

A Monetary Order in the amount of \$1,641.09 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenant's application is dismissed with leave to reapply.

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: August 16, 2016

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Residential Tenancy Branch



