



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, ERP, RP, PSF, RR, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the Act) for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 60;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 55;
- an order to the landlord to make repairs to the manufactured home park or site pursuant to section 26;
- an order to the landlord to make emergency repairs to the manufactured home park or site pursuant to section 27;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 58;
- an order to the landlord to provide services or facilities required by law pursuant to section 55; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 65.

The hearing for this application occurred over two hearing dates.

The tenant appeared. The tenant elected to call two witnesses. The landlord attended. The landlord was assisted by his two agents (MD and JK) at the first hearing date. Between the first and second hearing dates, the landlord terminated the employment of these agents. The landlord attended with the agent EY, who is also the landlord's spouse, (the agent) at the second hearing date. Those in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The parties did not raise issues of service.

The tenant claims for \$25,000.00:

Item	Amount
Restricted Water Services	\$5,000.00
Poor Road Maintenance	4,000.00
Sewer Issues	5,000.00
Garbage Safety	4,000.00
Inconvenience of My Kids and Family	7,000.00
<b>Total Monetary Order Sought</b>	<b>\$25,000.00</b>

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement? Is the tenant entitled to order requiring the landlord to comply with the Act, regulation or tenancy agreement? Is the tenant entitled to an order that the landlord make repairs and emergency repairs to the manufactured home park or site? Is the tenant entitled to a monetary order for a reduction in rent for repairs, services or facilities agreed upon but not provided? Is the tenant entitled to an order that the landlord provide services or facilities required by law? Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began on or about 1 October 2008. Current monthly pad rent is \$360.00.

I was provided with a copy of the tenancy agreement. The tenancy agreement sets out the following relevant terms:

- 4(a). *Your lot is your responsibility. It is to be kept free of all debris.*
- 5(f) *[the landlord] provides sewer, water, garbage (large dumpster) and snow removal of roadways.*
- 5(a) *Tenants must provide and maintain hook-ups for sewer, water, hydro, gas, telephone and cable vision.*
- 7(i) *[the landlord] contracts snow removal and road maintenance. Driveways, sidewalks and roofs are the tenant's responsibility.*

The tenant testified that the machine the landlord has is inadequate for plowing the snow. The tenant testified that the management does not live in the manufactured home park and that they are unaware of when to plow the streets. The tenant testified that the road around her manufactured home is rutted from improper plowing in the winter. The tenant testified that as a result of the ruts the tenant's children have difficulty getting to the bus stop and must walk on the neighbour's yard. The tenant alleges that the landlord places sand on the road and that the excessive sand caused a child to fall on his bike.

The witness CH is the tenant's father-in-law. CH testified that he is at the rental unit between two and three times per week and has been attending at the rental unit since 2008. CH testified that when it rains it can be difficult to get near to the manufactured home because of puddles on the roadway. CH testified that this generally occurs in the spring and fall.

MG testified that his girlfriend has a manufactured home approximately four sites from the tenant's manufactured home site and on the same sewer line and the tenant's. The agent testified that MG is not a resident of the park.

MG testified that the tenant lives at the end of the sewage run. MG testified that the roads are poorly maintained in the winter to the point where cars are driving in ice ruts. MG testified that when there is a moderate or heavy rain, the road will flood.

The tenant testified that there are speed bumps on the roads within the manufactured home park, but that people still speed through the manufactured home park. The tenant testified that the police will not intervene because it is private property. The tenant submits that the landlord should do more to deal with the issue of speeding. The tenant suggests fines or a penalty.

The agent testified that the landlord has road maintenance conducted annually. The landlord testified that the snow plow will not work for ice and requires a bigger loader. The landlord testified that the larger snow removal machine was brought in twice last winter. The landlord testified that there have been no reports of injuries or falls.

The landlord testified that he has installed speed bumps and speed limits signs. The landlord denies that there is a problem with speeding in the manufactured home park.

The tenant testified that the garbage bins are always full and that another garbage bin is required. The tenant testified that wildlife is being impacted by the garbage and that wildlife is foraging in the garbage.

CH testified that the garbage is always full and that there is garbage on the ground. CH submitted that this is a good attractant for bears and foxes. CH testified that approximately 25 to 30% of the time there is an issue with the garbage overflowing.

MG testified that there are three garbage bins, but that these bins are full and overflowing. MG testified that the garbage is causing health concerns.

The landlord testified that there are three large garbage bins for the manufactured home park comprised of 155 homes. The landlord testified that the bins are emptied weekly. The landlord testified that there is usually not garbage on the ground. The landlord testified that the bins fill quickly as non-residents will come to the park to dump garbage. The landlord testified that he is working with the garbage provider to reach a solution.

The tenant testified that the drainage hole is a concern. The tenant testified that the grate is bent and the bricks are eroding. The tenant submits that if a child jumped on the grating, that child would fall through. The tenant testified that the grate started to fall through when someone stomped on it. The tenant submits that she has asked repeatedly for the covering to be made safer. The tenant provided me with a photograph of the cover taken in June 2016.

CH testified that the grate appears to be dilapidated and is rusted. CH testified that it appears that it could collapse as the support around the grate is eroding. CH testified that he has not personally tested the safety of the grate.

The landlord testified that he has stood on the grate and that it supported his weight. The landlord testified that he has replaced the structure around the grating.

The tenant testified that landlord dug up the sewer approximately four years ago and that this caused the addition to her home to shift. The landlord testified that he has not observed any separation between the manufactured home and the addition. The landlord testified that the digging that occurred was far from the site.

The tenant testified that the landlord does not pump out the septic tanks and alleges that they are completely full. The tenant submits that the system is not being taken care of properly. The tenant submits that this is a health issue for her children and needs to be addressed immediately. The tenant testified that she has requested that this issue

be addressed. The tenant provided an article from a local paper. In that article the author notes that she could smell sewage.

CH testified that there is a sewer smell near the rental unit. CH testified that he has not personally observed overflow, but that there is a smell in the manufactured home and outside that is worse when it rains.

MG testified that his girlfriend has issues with drainage and the smell of sewage. MG testified that the kitchen sink will drain slowly and that sewage will come back up. MG testified that the smell is dominant in the hallway. MG testified that he has smelled the sewer smell approximately fifty times.

The landlord denies that there is any sewer smell in the manufactured home park. The landlord testified that the lid to the septic tank is not broken. The landlord testified that he or his agents check the septic tank every week or two. The agent testified that the landlord has annual maintenance for the sewer pump.

The agent testified that she spoke with four residents on the same road as the tenant and who share the same septic tank. The agent testified that none reported issues with back up of sewage. The agent testified that when she was there, she was unable to smell any sewer smell near the tenant's manufactured home site.

The landlord provided a written statement dated 28 June 2016 from RH. RH writes that he attended at the manufactured home site near the septic tank and did not detect any smell. The tenant submits that RH is too far away to smell any of the issues of which the tenant complains.

The tenant testified that her deck is on part of her driveway and that her car is parked in front of her deck. The tenant testified that she parks her motorhome on an area of mud and gravel. The tenant testified that the rocks that used to be there have been washed away by water. The landlord testified that the tenant has been provided with the paved driveway area as all sites are. The landlord submits that if the tenant wishes to have more gravel for a driveway then it is her responsibility to complete the improvement to the site.

The tenant testified that the landlord has known that there is a problem with the water for the last five years. The tenant testified that she is aware that the landlord has contracted with a firm to design an improved system, but that there are no dates secured for this repair. The tenant testified that the landlord twice went around to the various residents of the manufactured home park to provide them with bottled water.

The tenant testified that she uses a motor home parked on the manufactured home site to store extra water. The tenant testified that the landlord provided a \$300.00 gift certificate to the tenant. The tenant testified that the watering restrictions caused her lawn to die. The tenant submits that it is inappropriate to compare the water restrictions used to other municipalities as those municipalities' weather is not the same.

MG testified that the water will be shut off from 0100 to 0500. MG testified that half of this time the water will be shut off without notice to the tenants. MG testified that the landlord went around the manufactured home park to distribute bottles of water. MG testified that the landlord has installed two water tanks.

The landlord testified that there has been a problem with the water system in the manufactured home park. The problem began in February. The landlord testified that the water was shut off once or twice a week between 0100 and 0500 to build pressure for February and March. The landlord testified that the water was shut off each night between 0100 and 0500 for April, May and part of June. The landlord testified that the water has not been shut off since 13 June 2016 and that the problem is resolved. The landlord testified that there may be a half day shut off to finalize repairs and complete preventative work. The landlord testified that he has never instructed tenants not to water their lawns but has asked them to restrict water use.

The landlord submits that the tenant has received compensation for the water issue when she accepted the \$300.00 in gift certificates 5 February 2016. I was provided a letter dated 5 February 2016 from the landlord to the tenant. The letter sets out that the landlord will provide a \$300.00 gift card as compensation for the inconvenience for the water shut offs during the required repairs. The tenant has signed the letter.

The tenant provided a written statement. The following relevant excerpts are reproduced as written:

- *sewer systems have not been properly looked after and become over full and release a stink that is unbearable let alone I wonder how safe this is when it occurs more than once a month at certain times of yr.*
- *the water system they have in place is falling and has been for quite some time for this entire winter we have been dealing with water shut offs during the day and everynight from 1am to 5 am this is becoming more and more of an issue as we have to have buckets of water stored in our homes for these time . I personally am tired of moving around these heavy water containers around my home. Just to suite these managers who are able to haul in water so they don't have to shut off our water at night this is an added expense but I believe the*

*constant shutting off and turning on our water is causing more issues than actually fixing it.*

- *My yard needs new rocks put into it to stop the mud issues I have. ... hard to maintain my yard with rocks with the flood every time it rains hard or the snow isnt removed properly removes my rocks in my yard.*

The landlord denies that there are outstanding issues with the manufactured home park. The landlord stated that he did not understand the tenant's \$25,000.00 claim.

The landlord testified that he has not received any written complaints from the tenant. The landlord testified that the tenant has informed the landlord that the manufactured home is separating from the addition. The landlord testified that the tenant has never complained about a sewer smell. The landlord testified that the first time he heard about the garbage issue was in the application for dispute resolution. The landlord testified that the tenant has not complained about the snow removal issue. The landlord testified that he has spoken to the tenant four times: including two times regarding the separation issue, one time about the lawn watering restrictions and one time about the gravel issue.

### Analysis

The various remedies sought by the tenant all relate to perceived deficiencies with the manufactured home park and site that the tenant says are the landlord's responsibility to provide, maintain, and repair. In particular, the tenant complains of the following deficiencies:

- road maintenance and enforcement of speed limits;
- insufficient garbage containers;
- a deteriorating grate;
- separation of the addition to her rental unit; and
- sewer issues;
- lack of a gravel driveway; and
- restriction of water services..

In considering the tenant's claim, I must apply the following provisions of the Act:

Section 26 of the Act sets out the obligations to repair and maintain the manufactured home park:

- (1) A landlord must

- (a) provide and maintain the manufactured home park in a reasonable state of repair, and
  - (b) comply with housing, health and safety standards required by law.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas.
- (3) 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.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord is not required to maintain or repair improvements made to a manufactured home site by a tenant occupying the site, or the assignee of the tenant, unless the obligation to do so is a term of their tenancy agreement.

...

Subsection 55(3) of the Act permits me to make any order necessary to give effect to the rights, obligations and prohibitions under the Act, including an order that a landlord or tenant comply with the Act, the regulations or a tenancy agreement.

Paragraph 58(1)(f) of the Act permits me to award a past or future rent reduction for an amount that is equivalent to a reduction in the value of a tenancy agreement.

Section 60 allows me to order compensation from one party to another:

Without limiting the general authority in section 55 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The tenant submits that the landlord has not provided adequate road maintenance. The tenant did not provide any photographs of the alleged deficiencies. The tenant provided testimony from her father-in-law and MG. The landlord denies that the road is

improperly maintained. The tenant seeks compensation in the amount of \$4,000.00 for the purported breach.

Pursuant to subsection 26(1) of the Act, the landlord must maintain the roads in a reasonable state of repair and comply with housing, health and safety standards required by law. The complaints of the tenant regarding road maintenance are associated with weather conditions. The tenant has not provided sufficient evidence to show that the state of repair of the roads in response to the weather conditions is not "reasonable". For this reason, I find that the tenant has not shown that the landlord has failed to comply with subsection 26(1) of the Act with respect to road maintenance.

The tenant submits that the landlord must do more to control the speed at which other residents of the park drive. The landlord has installed speed bumps and speed limit signs. I find that these steps meet the landlord's obligations pursuant to subsection 26(1) of the Act. The tenant has not identified any particular residents (or guests of residents) that are causing issues. If the tenant were to identify specific problem residents the landlord may have obligations to address the issue with those specific residents. For these reasons, I find that the tenant has not shown that the landlord has failed to comply with the Act or regulation with respect to speed limits in the park.

As the tenant has failed to show that the road maintenance constitutes a breach of the Act, regulation or tenancy agreement, the tenant is not entitled to compensation pursuant to section 60 of the Act.

The tenant submits that the landlord should install extra garbage bins to accommodate the amount of trash produced by the residents of the manufactured home park. The landlord submits that the problem is caused by non-residents dumping garbage. This garbage area is a service provided by the landlord. The tenant submits that the lack of sufficient garbage bins is causing garbage to be strewn across the park and causing damage to wildlife. The tenant claims \$4,000.00 for this breach.

I find that the garbage area provided is inadequate to comply with the landlord's obligations pursuant to subsection 26(1) of the Act as the lack of sufficient garbage bins is causing garbage to overflow and dirty the park. Pursuant to section 55 of the Act, I order the landlord to remedy the issue by any appropriate means, which may include adding locks to the bins to prevent unsanctioned dumping or adding an extra bin. The landlord is directed to remedy this issue within one month of the date of this decision.

The tenant claims for \$4,000.00 as compensation for the garbage issue. In order to claim compensation the tenant must show that she experienced some damage or loss

that resulted from the landlord's breach of the Act, regulation or tenancy agreement. While I accept that the garbage issue may have been on occasion unsightly, the tenant has failed to show that the experience was so severe or of such duration that she experienced any actual loss, damage, or devaluation in the tenancy. The tenant is not entitled to be compensated for any harm that may have resulted to the wildlife. As such, I decline to award the tenant compensation pursuant to section 60 or paragraph 58(1)(f) of the Act.

The tenant submits that a grate in the manufactured home park was unsafe. The landlord admitted that the support around the grating was eroding and testified that he has repaired issue.

The tenant has provided insufficient evidence to show that the grate was actually unsafe. The proposed issues are largely speculative. The tenant has provided evidence that the grate bent when it was "stomped" on; however, the landlord says that he stood on the grating and it supported his weight. On balance, I find that the tenant has failed to show that the condition of the grating constituted a breach of the landlord's obligations pursuant to subsection 26(1) of the Act.

The tenant submits that digging four years ago caused her addition to separate from her residence. The landlord submits that the digging was far away and was not the cause of the separation if any such separation exists. I accept that the landlord did conduct digging; however, the tenant has failed to show that the digging was the cause of the separation. Without showing that the landlord caused this damage, the tenant is not entitled to any compensation.

The tenant submits that the landlord's inadequate maintenance of the sewer system is causing a smell and issues with draining. The tenant claims compensation of \$5,000.00 for the purported issues. There has been various and differing testimony about the existence, extent and duration of the problem. The landlord submits that no other residents have identified similar complaints. The landlord submits that his maintenance schedule of annual maintenance and weekly or biweekly inspection is sufficient.

I accept the landlord's evidence regarding his maintenance of the sewer system. I accept the tenant's evidence that she is experiencing issues with drainage in her rental unit. This issue may be the landlord's responsibility pursuant to clause 5(f) of the tenancy agreement or it may be the tenant's issue pursuant to clause 5(a) of the tenancy agreement. Pursuant to subsection 55(3) of the Act, I direct the landlord to investigate whether the issue arises from problems in the section over which the

landlord is responsible to maintain. The landlord must complete this investigation within one month of this decision.

The tenant seeks \$5,000.00 as compensation for the sewer issues. In order to claim compensation the tenant must show that she experienced some damage or loss that resulted from the landlord's breach of the Act, regulation or tenancy agreement. As the landlord and tenant share responsibility for portions of the sewer system (pre or post hookup) it is impossible to determine at this juncture whether or not the landlord has caused the tenant damage or loss or devaluation in the tenancy. As such, I decline to award the tenant compensation pursuant to section 60 or paragraph 58(1)(f) of the Act.

The landlord says that it is the tenant's responsibility to install a gravel driveway if she so chooses. The landlord admits that he has provided the asphalt driveway. The tenant submits that it is the landlord's responsibility to install and maintain the driveway. There is no mention of a gravel driveway provided as part of the terms of the tenancy agreement.

On the basis of the evidence before me, I find that any gravel that may have been on the property was not provided as part of the tenancy agreement and is an improvement that the tenant has the responsibility to install and maintain. I decline to order the landlord to install gravel on the tenant's behalf.

The tenant claims \$5,000.00 in compensation for the water restrictions. The landlord admits that water was restricted in order to deal with maintenance issues. The landlord has provided compensation to the tenant in the amount of \$300.00. Water services are provided under the tenancy agreement.

I find that the landlord is obliged to provide water services and that the landlord restricted access to this service. I accept that the restrictions were necessary to an extent to deal with the aging water infrastructure. I find that by restricting the water services, the landlord failed to provide water as required under the tenancy agreement.

The landlord attempted to lessen the effects on tenants by providing bottled water and generally restricting the shut offs to 0100 and 0500. The tenant testified that she has mitigated her losses by using a traveler trailer parked on her site to store water for the periods of shut off.

The tenant seeks \$5,000.00 in compensation for the service interruptions. The water restriction generally occurred during the period of 0100 and 0500, the landlord provided bottled water, and the tenant was able to use a trailer on her site to store water. The

tenant has not provided evidence of any specific damage, but I accept that the interruptions, especially those scheduled during the day, would inconvenience the tenant. I find that the steps taken by the landlord to reduce the effects on tenants militate in favour of a reduced award. However, water, by its nature, is an important part of living, which adds to the severity of the breach. In consideration of the above factors, I value the tenant's loss as 10% of her pad rent for February and March and 25% for April, May and portion of June (\$36.00; \$36.00; \$90.00; \$90.00; \$39.00).

The landlord extended \$300.00 in compensation to the tenant for the inconvenience caused by the need to shut off water to repair leaks. The wording of the offer letter contemplated future shut offs. I find that the amount of compensation awarded for the water shut off must be offset by the compensation the landlord extended and the tenant accepted. In accordance with the award as set out above, the tenant has been compensated in excess of the amount that I would order to be paid. The tenant is not entitled to further compensation in excess of the amount already paid; however, the tenant need not return the excess amount as that amount was agreed to by the landlord.

The tenant claims that the water restrictions caused her lawn to die. The landlord testified that the water restrictions did not completely eliminate watering, but did ask the tenant's to water sparingly. I find that the tenant has failed to show that the watering restrictions caused the lawn to die. I find that it is more likely than not that the lawn died as result of the tenant's own neglect. As such, the tenant is not entitled to recover any costs associated with the lawn repair and the landlord is not responsible to repair the lawn.

The tenant claims for "inconvenience of my kids + family". This claim is not linked to any additional breach of the Act, regulation or tenancy agreement. As such, I consider that this claim has been addressed by my consideration of the specific deficiencies as outlined above.

The tenant seeks recovery of her filing fee from the landlord. Pursuant to subsection 65(1) of the Act, I order payment of a fee to another party. The tenant claimed for multiple different deficiencies and damages in the amount of \$25,000.00. The tenant has not been successful in showing any entitlement to further compensation and has only shown two items requiring repair or investigation. On the basis of the tenant's partial success I am exercising my discretion to award the tenant recovery of one half of her filing fee from the landlord.

Conclusion

The landlord is ordered to remedy the overfilled garbage bins and investigate the sewer smell and drain issues within one month from the date of this decision.

I issue a monetary order in the tenant's favour in the amount of \$50.00. The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The remainder of the tenant's claim is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: August 11, 2016

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Residential Tenancy Branch