



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, OLC, ERP, PSF, O

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on September 28, 2016. The Tenant applied for the following issues:

- for the Landlord to make emergency repairs to the rental site;
- for the cost of emergency repairs to the rental site;
- for money owed or compensation for damage or loss under the *Manufactured Home Park Tenancy Act* (the “Act”), regulation or tenancy agreement;
- for the Landlord to comply with the Act, regulation or tenancy agreement;
- for the Landlord to provide services required by law; and
- for “Other” undisclosed issues.

### Preliminary Issues

The Tenant appeared and provided affirmed testimony during the hearing as well as documentary evidence in advance of the hearing. However, there was no appearance for the Landlord or any submission of evidence prior to the hearing. As a result, I turned my mind to the service of documents for this hearing by the Tenant.

The Tenant testified that he had served a copy of the Application, the Notice of Hearing documents and his documentary evidence by registered mail to the Landlord’s address on October 3, 2016. The Tenant provided the Canada Post tracking receipt as evidence to support this method of service. The Tenant testified that the documents were returned to him as unclaimed even though the Tenant had served documents to the same address for a previous hearing that the Landlord had appeared for. The Tenant provided the file number for that hearing and allowed me to examine the decision for that file to verify his testimony. That file number is documented on the front page of this Decision.

Section 83(a) of the Act explains that a document served by registered mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failure or neglect to pick up mail. Based on the deeming provisions of the Act and the undisputed evidence of the Tenant in relation to the service of the documents, I am satisfied that the Tenant served the Landlord with the required documents for this hearing and they are deemed to have been served on October 8, 2016. The hearing continued to hear the undisputed evidence of the Tenant.

During the hearing, the Tenant explained that his main priority and purpose for making the Application was to restore power to the rental unit and he wanted to know whether he should pay his rent, which was due on the date of this hearing, as he had made a monetary claim. As the Tenant wanted the Decision to be made today, the Tenant agreed to withdraw his monetary claim so that the remaining matters on the Tenant's Application could be expedited.

#### Issue(s) to be Decided

Is the Tenant entitled to an order requiring the Landlord to provide the Tenant with means to obtain power to the rental unit?

#### Background and Evidence

The Tenant testified that his tenancy with the Landlord for rental of the manufactured home site began ten years ago. The monthly pad rent is \$200.00 payable on the first day of each month. The Tenant stated that the Landlord gave him permission eight years ago to allow power to the rental site and the utility was placed into the Tenant's name which the Tenant has been paying ever since.

The Tenant testified that on June 13, 2016, the Tenant's power to his manufactured home was cut off. When the Tenant contacted the power company whom he had an account with, the representative informed him that it was the Tenant that had contacted the power company to shut the power down and transferred the account into the Landlord's name. The representative informed the Tenant that somehow the Landlord had gotten around the security procedures to get into the Tenant's account. The Tenant was shocked as he had not done this but suspected that the Landlord may have impersonated the Tenant to the power company as a way to get the power shut off.

The Tenant explained that the Landlord is alcoholic and has caused many problems in this tenancy when he does not get his way. The Tenant testified that he requested a recording and transcript of the conversation that took place with the power company

that led to the shutting down of the power and the account change. When the Tenant received the transcript, which he provided into evidence for this hearing, he realised that it was indeed the Landlord that was impersonating him.

The Tenant then contacted the power company who informed him that they could do nothing until the Landlord contacted them and provided them with his security information to make further changes. The Tenant then contacted the police and testified that he had provided them with the evidence and that the police were in the process of laying fraud charges against the Landlord. The Tenant explained that he has requested multiple times for the Landlord to change the account back into the Tenant's name so he can get power but the Landlord is failing to comply with anybody who makes this request of him. The Tenant testified that the Landlord had also cut the main electrical wire supplying the rental site and as a result, the power company attended the site and removed the electrical meter until the matter has been resolved.

The Tenant testified that since June 2016 he has had no power to the site and he is concerned because the cold months are coming. The Tenant testified that he has been using his oil powered generator as a source of power to the rental unit but this only gives him limited use of his manufactured home. The Tenant provided multiple gasoline receipts for this period to support the fact that he has no power. The Tenant stated that he is desperate to get power back into his name as it is creating a significant disturbance to his life and that the Landlord is doing this as a way to intimidate and disrupt the Tenant's tenancy.

### Analysis

I have examined the Tenant's undisputed testimony and written evidence and make the following findings based on a balance of probabilities. Section 21(1) of the Act provides that a landlord must not terminate or restrict a service or facility if it is essential to the use of the manufactured home site as a site for the manufactured home. Section 27(1) of the Act defines emergency repairs as those that are urgent, necessary for the health or safety for the preservation or use of the property and includes electrical systems.

Based on the Tenant's evidence before me, I am satisfied that the Landlord is not complying with the Act by failing to provide the means for the Tenant to have power to his rental site which is a requirement of the Act. I accept the undisputed evidence of the Tenant that the Landlord has taken willful and malicious steps to prevent the Tenant from having power to the rental site. I also accept the Tenant's evidence that the Landlord interfered with the power lines that are essential in providing power to the rental site.

Taking into consideration the impact the lack of power has had on the Tenant's life and that the cold winter months are upon the Tenant, I find that this essential and emergency service must be restored back to the Tenant if the Tenant is to have peaceful and quiet enjoyment of this tenancy.

Section 58(1)(b) of the Act authorises me to make an order that a tenant may deduct an amount from rent to be expended on a service or facility not provided. After taking into account the impact on the Tenant, I order the Tenant to withhold full rent starting November 1, 2016 until such time the Tenant is provided with access to his utility account and the repairs to the electrical wiring and restoration of the meter have been undertaken.

If the Landlord completes the necessary repairs and takes the necessary actions ordered in this Decision, I order that the monthly rent for this tenancy reverts back to the regular amount established in this tenancy of \$200.00 per month after the repairs are completed. For example, if the Landlord complies with this Decision by December 14, 2016 the Tenant is liable to pay the normal amount of rent on January 1, 2017 minus any other deductions that maybe authorised in the interim period. However, if the Landlord complies with this Decision and the Tenant is not satisfied and continues to withhold rent, the Landlord is required to file an Application to prove that there has been compliance with this Decision. The Landlord is cautioned that the Tenant may apply for further monetary compensation, which may include aggravated damages.

### Conclusion

The Landlord is ordered to comply with the Act and provide the Tenant with access to his utility account and repair electrical wiring so that the Tenant is able to get power to the rental site. The Tenant may withhold rent until the Landlord complies with this order. The Tenant is at liberty to re-apply for his monetary claim. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 01, 2016

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Residential Tenancy Branch