



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC OLC, PSF, RP, RR

### Introduction

The Director has joined the Tenants' application to be heard together as the matters are related and it is logical to do so. Each of the Tenant Applicants has filed an Application for Dispute Resolution that seeks the following:

- a. An order for a monetary order in the sum of \$5000.
- b. An order that the landlord comply with the Act, regulations or tenancy agreement.
- c. An order to recover the cost of the filing fee?

A hearing was conducted by conference call in the presence of the tenants and in the absence of the landlord(s) although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing filed by each of the tenants was served on the landlords by mailing, by registered mail to where the landlord resides and carries on business on August 13, 2016. I find that the evidence package was served by registered mail on the landlords to where he resides and carries on business on January 24, 2017.

The tenants identified their claims in the boxes on the Application for Dispute Resolution and the Details of Dispute which is part of the Application. While the tenant failed to check the box in the Application for Dispute Resolution that they are seeking a reduction of rent for repairs, services or facilities agreed upon but not provided materials I determined that this claim is apparent from the Details of Dispute. I determined the landlord has been given sufficient Notice of this claim. I ordered that each of their applications be amended to include a claim for an order for the reduction of rent for repairs, services or facilities agreed upon but not provided.

The landlord failed to appear at the hearing and failed to submit any evidence.

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order and if so how much?
- b. Whether the tenants are entitled to an order that the landlord comply with the Act, regulations or tenancy agreement?

- c. Whether the tenant is entitled to an order for the abatement of past or future rent and if so how much?
- d. Whether the tenant is entitled to recover the cost of the filing fee?

Preliminary Matters:

The tenants sought an order that the Residential Tenancy Branch impose severe penalties on the landlord for the failure to follow a previous arbitration Order. The Administrative Penalties Division 2.1 of the Act (section 86.1 to 86.31) involves a process initiated by the Director. I do not have the jurisdiction to issue an order under this section pursuant to a claim made in an Application for Dispute Resolution. As a result I dismissed this request.

The tenants also sought an order that I re-direct the payment of rent to the Residential Tenancy Branch. I determined this was not an appropriate remedy and dismissed this application.

Further, it is not appropriate for an arbitrator to re-make an order where another arbitrator has previously made the same order.

Background and Evidence

The landlords operate a manufactured home park. The tenants own their own manufactured home and are renting the manufactured home pads. The rent paid by the tenants varies between \$461 per month to approximately \$600 per month. It appears the differences relate to when the tenants moved in. The lower rents are paid by those who have been in the park the longest.

The tenants testified most of the residents in the Park are seniors over 65 years of age and they have been subject to intimidation and threats by the landlord.

Section 26(1) of the Manufactured Home Park Tenancy Act provides as follows:

**Landlord and tenant obligations to repair and maintain**

**26 (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.

Policy Guideline #16 includes the following:

**B. DAMAGE OR LOSS**

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- loss of access to any part of the residential property provided under a tenancy agreement;

- loss of a service or facility provided under a tenancy agreement;
- loss of quiet enjoyment (see Policy Guideline 6);
- loss of rental income that was to be received under a tenancy agreement and costs associated; and
- damage to a person, including both physical and mental.

### **C. COMPENSATION**

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the *Residential Tenancy Act* for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. “

The Application for Dispute Resolution filed by the Tenants was filed on July 20, 2016. Thus there is no issue of a failure to mitigate by filing an Application for Dispute Resolution in a timely manner.

Many of the Tenants’ claims relate to the landlord’s failure to comply with the Act and the order of the previous arbitrator made May 5, 2016. The tenants testified the landlord has acted with

malice and intimidation directed towards the tenants and much of his conduct is in reprisal to the results of the previous hearing.

I determined that where a landlord has breached legal rights owed to a Tenant such as in a situation such as this it is appropriate to order the landlord to compensate the tenants in the form of damages (where the quantum can be proven) or nominal damages.

Tenants' Claims Relating to the Septic System::

The previous arbitrator made the following two orders relating to the septic system:

- “The landlord must have the septic system at the Manufactured Home Park inspected by a qualified professional and have the septic system pumped out if the qualified professional deems it necessary. This is to be completed within two months of receiving this Order.
- The landlord must maintain the septic system, having it pumped on a regular basis as determined by the qualified professional.”

The tenants testified as follows:

- The landlord has failed to provide evidence as to whether he complied with these orders.
- They do not believe that the landlord has complied with the order although the landlord's evidence is necessary to confirm this..

I determined the landlord has the burden of proof to establish he has complied as he is the only person in the position to do so. In the absence of evidence from the landlord I determined the tenants are entitled to compensation for the failure of the landlord to maintain the property contrary to section 26(1) of the Act and failure to comply with the order of the previous arbitrator.

The tenants failed to provide sufficient evidence to quantify the value of their loss. However, I determined the landlord has breached a legal right owed to the tenants and they are entitled to nominal damages in the sum of \$50 for this claim.

I order that the landlord provide the tenants with evidence that he has complied with the following provisions of the provision of the May 5, 2016 order within 30 days of the date of this order.

- “The landlord must have the septic system at the Manufactured Home Park inspected by a qualified professional and have the septic system pumped out if the qualified professional deems it necessary. This is to be completed within two months of receiving this Order.
- The landlord must maintain the septic system, having it pumped on a regular basis as determined by the qualified professional.”

If the landlord fails to provide evidence of compliance the tenant's have liberty to file a further Application for Dispute Resolution. .

Tenants claim with respect to the Water System:

The previous arbitrator made the following orders relating to the water system:

- The landlord must ensure that each tenant is informed, **individually**, whenever the water is going to be turned off, or bleach is going to be added to the water system. This notification may be done in person, by phone, or by posting the notice on each tenant's door
- The landlord must ensure that the inspection, service and certification of the fire hydrants In the manufactured home park is completed within one month of receiving this Order, and that a back-up generator is in place for the water system within two months of receiving this Order.

The tenants gave the following testimony:

- On at least two occasions the landlord added bleach to the water system without individually informing the tenants that the water system was going to be turned off.
- Three of the tenants suffered significant health problems because of the presence of the bleach that lead to be taken to the hospital.
- They do not have any knowledge of whether the fire hydrants have been inspected, service and certified.
- The back up generator has not been put into place. On two occasions they were without water (one for 2 days and the other for 1 day). They were unable to flush toilets, shower, do laundry etc. during this period.
- Their fire insurance is null and void if the fire hydrants are not certified.

This is a joiner application. I determined that it was not appropriate to award compensation for an individual claim that is not the same for all applicants. However, the landlord has breached the legal rights of all tenants to be informed of when the water is to be turned off, or when bleach is to be added and this has occurred on at least two occasions. I determined the tenants are entitled to nominal damages of \$50 for each of the occasions for a total of \$100. I further determined that the failure to have a back up generator for the water pump has caused a significant reduction in the value of the tenancy on at least two occasions. The tenants are entitled to compensation of \$50 for each of those occasions for a total of \$100.

I order that the landlord provide written confirmation from the inspecting professional to each of the tenants individually that the fire hydrants have been inspected, service and certified within 30 days of the date of this order. If the landlord fails to comply the tenants have liberty to re-apply seeking damages.

Tenants' claim that the landlord provides copies of the tenancy agreements:

The previous arbitrator made the following order relating to the production of tenancy agreement:

- The landlord must ensure that copies of tenancy agreements are given to all tenants who have not yet received one, within one month, after receiving a list from the applicants, of all the tenants who have not yet received a tenancy agreement.

The tenants gave the following evidence:

- The landlord has charged the tenants for providing copies of the tenancy agreement.
- He has not provided signed copies.
- He has provided some of the tenancy agreement to certain tenants but not all.
- He has reimbursed a \$10 charge to some of the Tenants but not all.

The parties are referred to section 13(3) of the Manufactured Home Park Tenancy Act which provides as follows:

**Requirements for tenancy agreements**

**13 (3)** Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

The landlord has a duty to provide the tenants with a copy of the tenancy agreement. However, I determined it was not appropriate to make an order relating to this issue as it does not affect all applicants in the same way. If the landlord has not provided a tenancy agreement or has charged a fee for the provision of that tenancy agreement that he has not return each tenant must make a separate claim.

The previous arbitrator issued the following order with regard to the lock on the RV storage gate.

- "I Order that the landlord replace the lock on the RV storage gate, within 1 week of receiving this Order."

The tenants failed to provide sufficient evidence they are entitled to compensation with respect to this issue and as a result this claim is dismissed.

Tenants' claim for compensation for new lighting on the electrical shed

The previous arbitrator issued the following order:

- "I Order that the landlord ensure new lighting is installed on electrical shed by unit number 31, within one month of receiving this Order."

The tenants testified the landlord repaired the light with a motion sensor light that only comes on if a car drives past. It is inadequate and has burned out.

I order that the landlord replace the burned out light bulb to the electrical shed within 7 days of receipt of this order.

I dismissed the claim for compensation as there is insufficient evidence that the tenants have suffered a loss. This is not an appropriate case to award nominal damages as the landlord installed new lighting.

Tenants' claim for compensation for denial of access to the clubhouse:

The previous arbitrator issued the following order relating to the clubhouse:

- I Order that the landlord supply spare batteries for the lock to the clubhouse and provide an emergency key to be held by the tenant in unit # 26, within 1 week of receiving this Order."

The tenants gave the following evidence:

- In June 2016 the landlord removed the batteries to the clubhouse door thereby denying the tenant's access to the clubhouse
- They asked him to provide the battery and emergency key to the resident in unit #26 on several occasions but the landlord failed to respond to their request and has not provided access.
- The landlord failed to provide the tenant in unit #26 with a spare key.
- In the past the tenants would use the clubhouse on a weekly basis and they estimate the loss of value is \$30 per month.
- The tenancy agreement includes a "Use of Clubhouse Agreement."
- The Notice of Rent Increase indicates Recreation Facilities is included in the rent.
- Out of reprisal, the landlord has posted no trespassing signs on the common property and threatens to evict tenants who go on the common property.
- The tenants have been without the access to the clubhouse and common property since July 2016 to the date of this hearing.

The following definitions are set out in section 1 of the Manufactured Home Park Tenancy Act:

**"common area"** means any part of a manufactured home park the use of which is shared by tenants, or by a landlord and one or more tenants;

**"service or facility"** includes any of the following that are provided or agreed to be provided by a landlord to the tenant of a manufactured home site:

- (a) water, sewerage, electricity, lighting, roadway and other facilities;
- (b) utilities and related services;
- (c) garbage facilities and related services;
- (d) laundry facilities;
- (e) parking and storage areas;
- (f) recreation facilities;

**"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities;

I determined the common area and the clubhouse are part of what is provided by the landlord to the tenants as part of the tenancy agreement. I further determined the landlord has denied the tenant's access to the clubhouse and the common areas. I ordered that the landlord remove the "No Trespassing" signs on the common area by February 28, 2017. I determined the tenants have been denied access to clubhouse and they are entitled to compensation in the sum of \$20 per month for 8 months commencing July 1, 2016 to February 28, 2017 for a total of \$160.

If the landlord fails to provide access to the clubhouse as provided in the previous arbitrator's order and fails to remove the "No Trespassing" signs for the common area I determined the Tenants are entitled to a reduction of rent of \$20 per month for the denial of access to the clubhouse and \$10 per month for the denial of access to the common area commencing March 1, 2017 and on the first day of each month thereafter until the orders are complied with. .

Tenants' Claim relating to snow removal:

The previous arbitrator issued the following order relating to snow removal

- I Order that the landlord ensure that snow removal is done in a timely manner, and that the snow removal equipment is functioning properly prior to next winter's snow season.

The tenants gave the following evidence:

- The landlord failed to ensure the snow removal equipment was functioning properly.
- The landlord failed to remove the snow in a timely manner.



- There was a large amount of snow from December 16 to 18 that prevented access to the outside world which the landlord failed to remove in a timely fashion. No effort was made to remove the snow until the third day.
- One of the other tenants has volunteered his services and a partial snow removal was carried out.
- Many of the tenants have been isolated because of the failure to properly remove the snow. They have been unable to access their post boxes.
- There was a major dump of snow of approximately 40 cm. immediately prior to the date of the hearing.

I am satisfied based on the evidence presented that the landlord failed to comply with the order of the previous arbitrator and the obligations in the tenancy agreements relating to snow removal. The tenants are entitled to compensation for this failure. In coming to this determination I have recognized there has been an unusual large amount of snow this year and a reduction of compensation has been made to reflect this. In the circumstances I determined the tenants are entitled to damages in the sum of \$100 for the failure to remove the snow in a timely manner.

Issues unrelated to the Previous Order:

The tenants raised the following issues unrelated to the previous order of the arbitrator and seeking the following order:

- At times the level of coliform in the water is unacceptable and they seek an order that the landlord provide them with the report from the qualified professional immediately when this occurs.
- The landlord have the fire extinguishers inspected and if necessary replaced with they do not comply with fire regulations.
- The landlord be ordered to hire a fulltime or part time manager on site and hire a snow removal company.
- The tenants be permitted to use the bulletin board without fear they will be evicted.

The tenants gave the following evidence:

- The tenants have access to the Fraser Health Authority water audit reports on a yearly basis.
- The landlord is obliged to submit samples of the water supply to the Fraser Health Authority every Monday/Tuesday to be analysed by their lab. The park owner receives a copy of these reports on a weekly basis. The landlord never provides the Tenant with copies of these reports.
- There is an unacceptable amount of coliform in the water supply as per a result taken from a water sample for unit #3
- The well should be cleaned by a qualified professional.

The presence of coliform in the water is of major health concern. I determined that it was appropriate the tenants be given notice as to the results of the tests carried out by the Fraser

Health Authority and passed on to the landlord. I order the landlord to post the weekly reports received by the landlord from the Fraser Health Authority on a common bulletin board when received by the landlord. I am not satisfied it is necessary that the landlord provide this report individually to each Tenant.

I determined it was not appropriate to make any further orders with regard to the water system. The Fraser Health Authority is monitoring the water supply on a weekly basis. I am not willing to make any further orders relating to the water system In the absence of expert evidence from the Fraser Health Authority and/or a certified professional who can express an expert opinion as to whether there is a problem with the water system and how best to deal with it. If the tenants obtain such evidence they have the right to re-apply.

I order that the landlord hire a certified professional to inspect the fire extinguishers in the Clubhouse and if necessary replace the replace those fire extinguisher that do not comply with fire standards by March 31, 2017 and to provide the tenants of this application notification this has been done within one week after completion.

I further ordered the landlord allow the tenant's access to the bulletin board to post all reasonable notices. .

I dismissed the tenants' application that I order that the landlord provide a full time or part time Manager for the Park for the following reason:

- The tenants failed to identify where an arbitrator has authority to grant such an order.
- I am not satisfied that such an order is appropriate.

However, as a courtesy to the parties I have set out section 27

#### Emergency repairs

27 ((2) The landlord must post and maintain in a conspicuous place in the manufactured home park, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

#### Conclusion:

In summary I hereby Order that the respondents, **419710 BC Inc. No. 419710 & Balora Singh Sidhu**, must comply with the following conditions:

- The landlord provide the tenants with evidence that they have complied with the following provisions of the provision of the May 5, 2016 order within 30 days of the date of this order.
  - "The landlord must have the septic system at the Manufactured Home Park inspected by a qualified professional and have the septic system pumped out if the

qualified professional deems it necessary. This is to be completed within two months of receiving this Order.

- The landlord must maintain the septic system, having it pumped on a regular basis as determined by the qualified professional.”

If the landlord fails to provide evidence of compliance the tenant's have liberty to file a further Application seeking damages.

- The landlord provide written confirmation from the inspecting professional to each of the tenants individually that the fire hydrants have been inspected, service and certified within 30 days of the date of this order. If the landlord fails to comply the tenants have liberty to re-apply seeking damages.
- The landlord replace the burned out light bulb to the electrical shed within 7 days of receipt of this order.
- The landlord remove the “No Trespassing” signs on the common area by February 28, 2017
- The landlord to post the weekly reports received by the landlord from the Fraser Health Authority on a common bulletin board when received by the landlord.
- The landlord hire a certified professional to inspect the fire extinguishers in the Clubhouse and if necessary replace the replace those fire extinguisher that do not comply with fire standards by March 31, 2017 and to provide the tenants of this application notification this has been done within one week after completion.
- The landlord allow the tenant’s access to the bulletin board to post all reasonable notices

Monetary Order:

I ordered that the landlord pay to the tenant(s) of each of the tenancies in this application the sum of \$510 plus \$100 each for the cost of the filing fee for a total of \$610 such sum may be deducted from future rent particulars are as follows:

• Nominal damages for the septic system	\$ 50
• Nominal damages for the failure to advise of the bleach (2x).	\$100
• Failure to provide a back up generator for the water pump	\$100
• Denial of access to the clubhouse and common area	\$160
• Failure to remove the snow in a timely manner	\$100
• Filing fee	<u>\$100</u>
Total	\$660

Reduction of Rent

I further order that if the landlord fails to comply with the orders set out below the rent the tenants are obliged to pay for each of the tenancies shall be reduced as follows commencing March 1, 2017 and on the first day of each month thereafter until the landlord complies::

- If the landlord fails to provide access to the clubhouse as provided in the previous arbitrator's order the rent shall be reduced by \$20 per month
- If the landlord fails to remove the "No Trespassing" signs for the common area I I order that the rent shall be reduced by \$10 per month.

It is unfortunate the landlord refused to comply with the order of the previous arbitrator. The landlord is put on warning that continued refusal to comply with the Act, regulations and tenancy agreement and to comply with an arbitrator's order may give tenants have the rights to make additional applications for the further reduction of rent.

**This decision is final and binding on both parties.**

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: February 20, 2017

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Residential Tenancy Branch