



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, DRI, MNDC, MNR, O, OLC, FF

### Introduction

In three applications the tenants apply to cancel three relatively concurrent Notices to End Tenancy for unpaid rent. In the third application they also seek compensation for labour and materials for a fence.

At this hearing, parties were able to resolve the issues regarding the three Notices and rent generally.

The property is an RV Park, originally designed for the temporary accommodation of recreational vehicles. The tenants moved their fifth wheel RV onto the property in 2011. At that time the landlord was a Mr. D. The tenants have kept their RV at the park continuously since then. They have improved the site on which it is located. Mr. D. made accommodation to these and to other tenants of the park for year round use.

Ms. G.L. and Mr. T.L. purchased the park in January 2017. It was their understanding that it was an RV Park, not a manufactured home park and they intended to operate it as a location for transient travellers.

The question of Mr. and Ms. Ts' status, whether *Manufactured Home Park Tenancy Act* (the "Act") applied to their relationship with the new owners, was determined in an earlier proceeding (related file number shown on cover page of this decision) in April 2017. It was determined that the tenants were tenants under the *Act*.

The tenants had no written agreement with Mr. D. The question of the amount of rent or its due date had not been set in writing. Mr. and Ms. L. appear to have received very little information about it from their vendor Mr. D. As a result, at the start of May, Ms. L. issued ten day Notices to End Tenancy for what had been indicated to be the annual rent of \$3000.00 and for April and May rents of \$425.00 and \$450.00 that she thought were the rents.

The parties have agreed as follows:

1. As of July 1, 2017 the tenancy will be a month to month tenancy.
2. The rent for the months of April to September, inclusive, of each year will be \$450.00, due on the first of each month, in advance. That rent includes up to \$40.00 worth of electrical usage. The tenants will reimburse the landlord for any usage over that amount in any of these months. The landlord has a private meter or recorder of usage for this site. The parties could not agree on how excess usage is to be recorded or reported. I leave that to them. In the event of a dispute, either side may apply for determination.
3. The rent for the months of October to March, inclusive, of each year will be \$50.00, due on the first of each month, in advance. That rent does not include any electrical usage. If the tenants will reimburse the landlord for any electrical usage during these months.

The remaining issue between the parties is about a fence.

The attending parties were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The tenants had filed some evidence two or three days before the hearing. It had not reached this file for my consideration. The landlord Ms. L. objected to the late evidence. Under Rule 3.14 of the Rules of Procedure, that evidence was required to be filed and a copy provided to the landlord fourteen days before the hearing. I exercised my discretion under Rule 3.17 and declined to accept in.

#### Issue(s) to be Decided

Are the tenants entitled to a fence? If so are they entitled to any cost relating to its removal or reconstruction?

#### Background and Evidence

The tenants constructed a lattice type fence during their tenancy with Mr. D. They had his permission to do so and, when they moved to the present site in the park Mr. D. assisted them in moving the fence.

The landlord Ms. L. testifies that she considered the fence to be unsightly, too high under the law and encroaching onto land not part of the tenants' site.

The tenants obtained permission for the fence from the previous landlord. They did not pay any additional rent for the privilege nor give any other consideration for it.

The tenant Mr. T. testifies that when the landlord directed him to remove the fence, he did so because "he didn't want to argue."

### Analysis

In order for there to be an enforceable bargain, there must be consideration. I find the tenants do not have an enforceable right to maintain the fence that was constructed.

I deny the tenants' claim regarding the deconstruction of the fence. It was there decision to comply with the landlord's direction rather than wait for a determination of their rights at this hearing.

In my view, in the circumstances of this case, the tenants are entitled to erect a fence on their site in order to provide privacy or screen their site from an unsightly neighbouring site. The type of fence may be the same as the earlier fence. That design had been accepted by Mr. D. They are not entitled to construct a fence in excess of what the local building or zoning laws may prohibit, despite what Mr. D. may have agreed to. They are not entitled to place a fence on any property not included within the boundaries of their site, without the express permission of the current landlords.

In these circumstances I dismiss the tenants' claim for cost related to deconstruction or re-construction of a fence.

### Conclusion

The tenants' claim to cancel three Notice's to End Tenancy is settled.

The tenants' claim for compensation regarding a fence is dismissed, subject to the direction above.

In light of the settlement and as the determination about the fence benefits both sides, I authorize the tenants to recover one half the total \$300.00 in filing fees for these applications. It is my view that even though they paid the amount demanded in two of the Notices within the allowed five day period, they would not have made applications regarding those Notices and paid \$100.00 for each unless they had been counselled to do so by the Residential Tenancy Branch, as they say they were.

I authorize the tenants to reduce their next rent due by \$150.00 in full satisfaction of the fees.

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: June 17, 2017

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Residential Tenancy Branch