



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNR MNDC RP PSF FF DRI CNC OLC

### **Introduction**

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 39;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (1 Month Notice) pursuant to section 40;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 60;
- an order to the landlord to make repairs to the rental unit pursuant to section 27;
- an order to the landlord to provide services or facilities required by law pursuant to section 58;
- authorization to recover the filing fee for this application, pursuant to section 65;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 36; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 81 and 82 of the *Act*, I find that the landlord was duly served with the tenants' application and evidence. The landlord did not submit any written evidence for this hearing.

### **Preliminary Issue-Jurisdiction**

At the beginning of the hearing the respondent in this application stated that this matter does not fall under the jurisdiction of the Residential Tenancy Branch as the applicants entered into a "license to occupy" agreement, and not a tenancy under the MHPTA. The respondent in this application stated that he was simply sharing his property with the applicants, and that only an oral agreement exists. He stated that no damage deposit was ever paid, and in exchange for a monthly payment of \$700.00 he allowed the parties to park their "park camper" on his property on a temporary, month-to-month basis.

The applicants' advocate, PC, testified in this hearing that the applicants had made an application for funding for housing, which was entered in their evidence. PC testified that the respondent had signed in the space labelled "landlord", and funding was approved for the \$700.00 monthly rent. PC also provided undisputed evidence that the respondents referred to the payments as "rent" in text messages to each other. PC stated that the term "license to occupy" was never used, and although no written tenancy agreement exists, this was still considered a tenancy, and falls under the jurisdiction of the RTB.

The tenant BW testified that the parties met on September 20, 2016 when an oral agreement was made to rent the pad where their "36 Wheeler" is parked, and where the applicants reside on a permanent basis. BW testified that the monthly rent was due on the first of every month, and the term "license to occupy" was never mentioned until July 1, 2017, well after this application was made. The tenants submitted in evidence photographs of their "36 Wheeler".

The definitions of "manufactured home", "manufactured home park", "manufactured home site", and "tenancy agreement" are outlined in the following terms in section 1 of the *Act*:

**"manufactured home"** means a structure, whether or not ordinarily equipped with wheels, that is

- (a) designed, constructed or manufactured to be moved from one place to another by being towed or carried, and
- (b) used or intended to be used as living accommodation;

**"manufactured home park"** means the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located;

**"manufactured home site"** means a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home;

**"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.

### **What this Act applies to**

- 2** (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, manufactured home sites and manufactured home parks.

Both parties gave evidence that there was an oral agreement for the applicants to park their 36 wheeler on the respondent's property in exchange for a monthly payment of \$700.00, referred to as "rent" by both parties. Although no signed agreement exists, and no security deposit was ever paid, both parties entered into an agreement pertaining to the applicants' right to park and reside in their 36 Wheeler on the respondent's property in exchange for money. The respondent referred to this arrangement as a "license to occupy", although this was disputed by the applicants.

RTB Policy Guideline 27(b) addresses statutory jurisdiction, specifically "does the statute confer upon the RTB the statutory authority to hear the dispute between the parties or to make the requested order?" 27(b)(1) discusses excluded jurisdiction, which states the following:

#### ***c. Travel Trailers and Recreational Vehicles***

*If the residential premises consist of a travel trailer or a recreational vehicle in a recreational vehicle park, the agreement between the parties may well be included in the Residential Tenancy Act if they meet the requirements of section 2. Each case will turn on its particular circumstances and it is possible that the relationship is not a tenancy and not included in the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (see Guideline 9).*

I have considered section 2 of the *MHPTA* as well as Policy Guideline 27 in making my decision in regards to jurisdiction. As the applicants utilize the 36 Wheeler as permanent

living accommodations, and it is designed to be moved from one place to another, I find that the 36 Wheeler meets the definition of a Manufactured Home under the *MHPTA*. As it is undisputed that a monthly payment was made in exchange for the ability to park this 36 Wheeler on a designated portion of the respondent's land, I find that the property falls under the definition of a Manufactured Home Park under the *MHPTA*. A tenancy agreement may be oral, or even implied, and does not require a security deposit to be valid. In fact, security deposits are not allowed for tenancies under the *MHPTA*. I find that an oral agreement was entered into on September 20, 2016. Based on the evidence before me, I find that the relationship between both parties is a tenancy, and this dispute falls within the jurisdiction of the *MHPTA*.

### **Issues**

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Should the landlord's 10 Day Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order to the landlord to provide services or facilities required by law?

Are the tenants entitled to recover the cost of the filing fee from the landlord for this application?

Are the tenants entitled to an order requiring the landlord to make repairs to the rental unit?

Are the tenants entitled to a determination regarding their dispute of an additional rent increase by the landlord?

## **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The tenants entered into an agreement to park and live in their 36 Wheeler on the landlord's property starting September 20, 2016. The agreement was oral, and the monthly site rental was set at \$700.00, due on the first of every month.

PC, advocate for the tenants, testified that the tenants were seeking an order for the landlord to comply with the *Act*, stating that the landlord was attempting to increase the rent from \$700.00 to \$1,000.00 per month. The tenant BW testified that the landlord approached him in March of 2017 outside the home to discuss a rent increase. The tenant stated that nothing was received in writing, and he had informed the landlord that the proposed \$300.00 increase was in excess of what was allowed under the *Act*.

The tenants submitted in their written evidence, a letter dated June 2, 2017, from the landlord which demanded that the tenants pay an additional \$300.00. The letter stated that the tenants had "two options...Option 1: Pay the remaining money owed \$300 and we will restore power and water. You will then have (as guest on our property) to leave by July 1st. Option 2: If money owed is not paid within 24 hrs, you have 10 days from June 1st (June 10, 2017) to remove yourselves and all personal items from our property. Power and water will be restored until 9pm June 10th".

The tenants stated that not only did the landlord try to impose a rent increase above the allowed amount, they had denied them essential services, as well as attempted to end the tenancy without proper notice. The tenants testified that as of 9:45 p.m. on June 1, 2017 the water and power were cut off, and have not been restored.

In their written evidence, the tenants requested an order for the landlord to restore the water and power, for the landlord to comply with the *Act*, and for the landlord to repair and maintain the driveway.

The tenants submitted a monetary claim for \$3,098.08. The tenants requested an amendment to the claim to reflect the costs incurred since the filing of their application since they were still without water and power. They requested an additional \$165.14 in accrued expenses be added to their monetary claim, and testified that receipts were provided to support this. I have accepted the tenants' request to amend their original

application from \$3,098.08 to \$3,263.22 because I find it is reasonable to expect the additional loss that has accrued by the time this hearing was convened.

The tenants indicated the following losses as listed in the table below:

<b>Item</b>	<b>Amount</b>
Loss of food in refrigerator due to shutdown of power (estimate)	\$50.00
Loss of food in freezer due to shut down of power (estimate)	250.00
Ice (receipts provided for June 4-13, 2017)	28.51
Batteries and battery lamps	14.70
Candles and Battery Lamps (receipts provided)	17.07
Public Pool Fee for Shower Use	12.80
Loss of Quiet Enjoyment (\$15/day)	225.00
Aggravated Damages	2,500.00
Accrued expenses since June 15, 2017	165.14
<b>Total Monetary Order Requested</b>	<b>\$3,263.22</b>

The tenants testified that due to the termination of the power to their home by the landlords, they lost the food in their fridge and freezer. The tenants provided an estimate as they did not anticipate this loss due to the sudden action of the landlords. The tenants testified that without power they have had to purchase ice to keep food from spoiling, and cook with propane.

The tenants testified that the hardship caused by the termination of the utilities was immense, and was not just monetary in nature. They testified that they had to maintain personal hygiene by showering at the public pool, and transport water from the creek to flush the toilet. The tenants submitted a monetary claim in the amount of \$15.00 per day as compensation for their loss of quiet enjoyment, as well as \$2,500.00 for aggravated damages.

The tenants provided receipts as well as photos of the spoiled food to support the monetary order requested. The tenants testified that the \$2,500.00 requested for aggravated damages was for an “intangible loss” due to the actions of the landlord. The

tenants testified that they experienced extreme hardship, embarrassment, and fear due to the harassment and actions of the landlord.

The landlord did not dispute that the water and power were shut off, but stated that it was done so by mutual agreement of both parties. The landlord testified that the extra \$300.00 requested was to cover the shared utilities until a separate meter could be installed. The landlord testified that the tenants never requested for the power to be restored, which the tenants dispute. The landlord also testified that the tenants had agreed to install their own meters, but did not. The landlord responded to the tenants' application to repair the driveway, stating that an excavator was required to move the 36 wheeler in, and that it would be required to move them out.

### **Analysis**

**Section 45** of the *Act* provides the following requirements requiring the form and content of notices to end tenancy:

- 45** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the manufactured home site,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 38 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
  - (e) when given by a landlord, be in the approved form.

The June 2, 2017 letter provided to the tenants by the landlord to vacate the property either within "10 days from June 1st" or "July 1st" does not comply with section 45(b) of the *Act* as the address of the manufactured home site is not stated anywhere in the letter, and most importantly the letter does not comply with section 45(e) of the *Act* as the notice is not in the approved form. The typed letter is also not signed by the landlords. This notice to end tenancy is invalid on multiple accounts as I have stated above, and accordingly I allow the tenants' application to cancel the landlord's notice to end this tenancy. The tenancy is to continue as per the *Act*, regulation, and oral agreement.

### **Terminating or restricting services or facilities**

**21** (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the manufactured home site as a site for a manufactured home.

I have considered the testimony and submissions of both parties, and I find that the tenants had provided testimony and evidence to support that the landlords failed to fulfill their obligations as required by sections 21 and 22 of the *Act* as stated above. It is undisputed that the landlord denied the tenant's access to power and water since June 1, 2017.

The tenants submitted a letter from the landlord which clearly confirmed the landlord's actions, as well as the demands of the landlord for the tenants to vacate the property without proper notice, and pay more rent. The landlord admitted in the hearing that he had terminated the water and power, stating that it was by mutual consent. The landlord did not provide any documentation, witness testimony, or written evidence to support this claim. The landlord also admitted that he had demanded an additional \$300.00 a month to cover the costs of utilities despite not giving any written notice to do so, or obtaining an order of an Arbitrator to do so.

### **Protection of tenant's right to quiet enjoyment**

**22** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with section 23 [*landlord's right to enter manufactured home site restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The tenants testified that they were subjected to harassment and loss of quiet enjoyment due to the actions of the landlord. The letter submitted by the tenants supports their assertion of the level of harassment that they have been subjected to during this tenancy. By restricting essential services to the tenants and by imposing



verbal and written demands on the tenants I find that the tenants suffered a loss of quiet enjoyment during this tenancy.

I find that the tenants demonstrated that they had suffered a monetary loss due to the actions of the landlord. The tenants submitted receipts as well as demonstrated that the landlord failed to comply with sections 21 and 22 of the Act. I find the tenant's monetary claim of \$15.00 per day for the loss of quiet enjoyment to be reasonable.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. However, unlike punitive damages, the conduct of the wrongdoer need not contain an element of wilfulness or recklessness in order for an award of aggravated damages to be made. All that is necessary is that the wrongdoer's conduct was highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

The tenants requested \$2,500.00 for aggravated damages as part of their monetary claim. Although I sympathize with the tenants and the fact that they suffered greatly during this tenancy, I find that they did not establish how this estimate was obtained, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the damages the tenants are seeking in this application. On this basis I find that the tenants are entitled to \$963.22 in monetary compensation for their loss as set out in the table below, which includes a nominal \$100.00 monetary award for aggravated damages. I find the tenants are also entitled to recover the filing fee for this application.

<b>Item</b>	<b>Amount</b>
Loss of food in refrigerator due to shutdown of power (estimate)	\$50.00
Loss of food in freezer due to shut down of power (estimate)	250.00
Ice (receipts provided for June 4-13, 2017)	28.51
Batteries and battery lamps	14.70
Candles and Battery Lamps (receipts provided)	17.07
Public Pool Fee for Shower Use	12.80
Loss of Quiet Enjoyment (\$15/day)	225.00
Aggravated Damages	100.00
Accrued expenses since June 15, 2017	165.14
Filing Fee	100.00
<b>Total Monetary Order Awarded</b>	<b>\$963.22</b>

Section 37 of the *Act* explains how a tenancy may end.

**37** (1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
  - (i) section 38 [*tenant's notice*];
  - (ii) section 39 [*landlord's notice: non-payment of rent*];
  - (iii) section 40 [*landlord's notice: cause*];
  - (iv) section 41 [*landlord's notice: end of employment*];
  - (v) section 42 [*landlord's notice: landlord's use of property*];
  - (vi) section 43 [*tenant may end tenancy early*];
- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the manufactured home site on the date specified as the end of the tenancy;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates the manufactured home site or abandons a manufactured home on the site;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

Section 35 of the *Act* stipulates that a notice of rent increase must be provided 3 months in advance of the increase and be in the approved form, available on the RTB website; a verbal or written demand does not comply with this requirement. As such, I find the letter sent to the tenants on June 2, 2016 for a \$300.00 rent increase, and for the tenancy to end on June 10, 2017 or July 1, 2017 is not compliant with sections 35 and 37 of the *Act*. Therefore, I find that rent for this tenancy is \$700.00 and I order that any future rent increases be implemented in accordance with section 35 of the *Act*. I also order that this tenancy continue until ended in accordance with the *Act* or regulation.

I order that the landlord comply with section 21 of the *Act* by restoring water and power to the tenants' home immediately.

The tenants requested an order for repairs. I find that the tenants did not provide sufficient evidence to support that repairs are required, and on this basis this portion of the tenants' application is dismissed.

### **Conclusion**

I order that this tenancy continue until ended in accordance with the *Act* and regulation. I also order that the landlord restore power and water to the tenants' home immediately.

I order that landlord accept the \$700.00 in monthly rent as agreed upon at the beginning of the tenancy, and that any future rent increases be implemented in accordance with the *Act*. I dismiss the tenants' applications for repairs.

I issue a \$963.22 Monetary Order in favour of the tenants as noted above. I allow the tenants the above monetary award by reducing future monthly rent payments until the amount is recovered in full. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$963.22, 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.

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 4, 2017

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Residential Tenancy Branch



# Residential Tenancy Branch

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