



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TIMBERLAND PROPERTIES INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, OLC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by made by the tenant's power of attorney (POA) for money owed or compensation for damage or loss under the Act, to have the landlord comply with the Act, regulation or tenancy agreement and to recover the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Issues to be Decided

Is the tenant entitled to a monetary order for money owed or compensation?  
Should the landlord be ordered to comply with the tenancy agreement?

### Background and Evidence

The tenancy began on January 1, 1996.

The tenant's POA testified that they are seeking an order to have the fence that is bolted to their mobile home and to the neighbouring mobile home removed. The POA states that a shed encroaches on the land that they lease and want it removed.

The tenant's POA testified that they seek compensation for damage to the mobile home as the bolts have caused damage. The tenant seeks to recover the amount of \$975.00.

The tenant's POA testified that they seek to recover the invoice for the costs of the survey to determine site size in the amount of \$105.00.

The tenant's POA testified that they seek compensation for the past seven years for the loss of use of a portion of property in the amount of \$8,400.00.

The landlord's agent testified that this was a pre-existing fence and has been there for many years, they believe even before this tenancy commenced. The landlord stated that they have an electrical shed on the property, which is part of the park. The landlord does not believe any other shed encroaches on their site. The agent stated that the landlord was never notified of either problems and cannot be held responsible.

The landlord's agent testified that there was a reason for the fence to be installed in this manner, and it most likely was because the septic tanks run between these two rental sites and that is the only way for it to be installed. The agent stated that the landlord has recently passed way.

The landlord's agent testified that the tenant was responsible to inform the landlord of any breaches when they allege the breach occurred. The landlord stated failure for the tenant to act on the breach for seven years is a significant and unreasonable delay.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the shed and fence was installed at least seven years ago. At no time during the last seven years did the tenant HD notified the landlord that a problem existed. HD was not at the hearing to provide any evidence.

While the tenant's POA indicates it was installed without the tenant's consent no affidavit from the tenant was provided. As such, I find there is no direct evidence from the applicant that this issue was ever raised with the landlord.

Further, even if an affidavit was provided, I find a seven year delay in moving forward to enforce their rights is unreasonable. I find the neighboring tenant and landlord had a right to rely upon the action or lack of action of the tenant.

Further, this small area of land is unusable as it has septic tanks in the area. I find I accept the landlord's submissions that it is most likely that the fence was built, in the manner that it was, as there is no other way to erect a fence between these two sites. And since the only person that may have known the reason is now deceased, I can only make that to be a reasonable conclusion.

I find the tenant failed to bring their claim forward within a reasonable timeframe. Seven years is a significant delay, whereby the rights to enforce is lost. Therefore, I dismiss the tenant's application without leave to reapply.

However, the landlord is cautioned that an Arbitrator might find that if the tenant ever sells and needs to have the manufactured home removed from the park, the landlord might have an obligation to detach the fence from the manufacture home and repair the parts of the home that were damage by the bolting to the home itself.

### Conclusion

The tenant's application is dismissed.

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: September 15, 2017

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Residential Tenancy Branch