



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding APPLE VALLEY MOBILE HOME PARK LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: OLC RPP RR

### Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") under the *Manufactured Home Park Tenancy Act (Act)*. The tenant applied for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, to return the tenant's personal property, and for a rent reduction.

The tenant, an advocate for the tenant, the landlord, and the manufactured park owner attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Neither party raised any concerns regarding the service of documentary evidence. As a result, I find the parties were sufficiently served under the *Act*.

I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

Due to an unexpected illness, this decision has been rendered outside of the 30 day timeline provided for under the *Act*. I note that this decision; however, remains fully enforceable and binding under the *Act*.

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator and confirmed that the decision would be emailed to both parties.

### Issues to be Decided

- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?
- Has the tenant provided sufficient evidence to support an order for the landlord to return the tenant's personal property under the *Act*?
- Has the tenant provided sufficient evidence to support a retroactive and ongoing rent reduction as claimed under the *Act*?

### Background and Evidence

The parties agreed that a month to month tenancy began in either 2002 or 2003. Although a signed tenancy agreement was not provided by either party, a blank tenancy agreement was submitted in evidence so that the location of the manufactured home park site was agreed to by the parties.

The parties agreed that site rent was originally \$250.00 per month and has been increased throughout the tenancy through regular annual rent increases to the current monthly site rent amount of \$404.00 per month.

The tenant is claiming the following:

1. A \$50.00 per month site rent reduction going forward
2. Compensation for 12 months of reduced rent or \$600.00
3. An order that the landlord return the tenant's personal property, wood from old fence.

The tenant claims that he is legally blind and that he is unable to locate the original tenancy agreement. The tenant claims that in 2009 a fence was erected between his property and the neighbour in site 32 ("neighbour"). The tenant claims that while there was no written agreement, the neighbour and the tenant had a verbal agreement that the tenant could build the fence where it was located, which the landlord testified encroached onto site 32, the site the neighbour was renting.

There is no dispute that in September 2016 a new neighbour occupied site 32. On September 21, 2016 the agent stated that they tenant was approached to advise that the fence was in need of replacement as it was in a state of disrepair. The agent advised that the fence would be placed on the property line 4.5 feet closer to the tenant's site. The tenant disputes that testimony and claims that the fence was promised to be in the same location and that the tenant would receive the wood from the old fence. The landlord denies both claims.

As of September 30, 2016, the tenant claims that he revoked any consent to move the fence at all and called the RCMP instead. The tenant alleges that the fence was installed 6 to 8 feet closer to the tenant's site but also admits that no exact measurements have been taken.

The tenant stated that although he used to spend a lot of time in the yard, he now has two broken hips but is seeking the three items described above. The tenant is upset that the wood for the fence was not returned to him, and that the fence was not erected where it was originally built in 2009.

The tenant's advocate stated that "estoppel" should apply as the previous landlord "assented" to the fence and that the landlord waited a long time before communicating any concern with the location of the tenant's fence. The tenant is alleging that he has lost 125 square feet ("SF") of his site due to the new location of the fence, which is comprised of five feet further in by 25 feet long. The tenant's advocate stated that the time frame for the tenant's compensation claim is from September 2016 to present.

The landlord vehemently denies taken any property away from the tenant's site and that the old fence was removed as it was in a state of disrepair and was erected on the property line in accordance with the site description on the tenancy agreement referred to in evidence which states:

"The mobile home pad is bordered on the front by the (east/west) \_\_\_\_\_ road, the back is bordered by the hydro lines, the side borders of the pad will be from the (north/south) \_\_\_\_\_ side of the trailer up the (north/south) \_\_\_\_\_ side of the neighbouring trailer # \_\_\_\_\_. The trailer pad has on minimum an area of 900 square feet."

[Reproduced as written]

The landlord referred to many photos submitted in evidence that shows the new fence in relation to the hydro lines. The landlord also referred to a photo of the tenant's shed which was encroaching beyond the hydro lines and to which the tenant advocate stated that as of November 1, 2017, the tenant's shed has been moved and is no longer under the hydro lines.

The landlord stated that the landlord would not take any property away from the tenant's site however the photo evidence supports that the neighbour built a fence around the tenant's encroaching shed based on the fence photos showing a straight line except for the tenant's fence which encroaches into the site of the neighbour.

The landlord also provided many aerial photos in evidence. The 1999 photo shows no fence, while the 2004 photo shows the tenant's shed encroaching onto the site of the neighbour. The 2012 photo shows a fence built around the encroaching shed of the tenant which the landlord alleges that the neighbour likely did to make peace with the tenant. The tenant claims he had verbal consent but failed to provide any statement from the neighbour in support.

The landlord claims that the old wood from the old fence had no value and was disposed of accordingly. The tenant failed to present evidence in support of the value of the wood of the old fence. The landlord testified that the tenant never painted or stained the original fence and that it was not maintained and fell into disrepair as a result.

The landlord testified that the tenant's yard is a fire hazard with a lot of junk and that to allege that he lost property due to the new fence is false. The landlord also referred to the Park Rules which state in part:

"All fences must be approved by the management....

...No tenant is allowed to erect any structure under the existing power lines."

[Reproduced as written]

### Analysis

Based on the documentary evidence, testimony and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I have carefully considered the evidence presented and I find that the tenant has failed to prove that a verbal agreement was made to erect the original fence and that it is just as likely that the neighbour did not approach the tenant to move the fence to make peace as alleged by the landlord. In reaching this decision I note that the tenant violated the Park Rules by erecting a shed beyond his site and below the hydro lines and without the fence being approved by management.

I will now address the tenant advocate's assertion that estoppel should apply in this matter. Estoppel is a rule of law that states when person A, by act or words, gives person B reason to believe that a certain set of facts upon which person B takes action, person A cannot later, to his (or her) benefit, deny those facts or say that his (or her) earlier act was improper. In effect, estoppel is a form of waiver, when person A does not enforce their rights and person B relies on this waiver. Based on the evidence before me, I do not agree that estoppel applies in this matter. I find that due to the change in landlord since the fence was erected and that two tenants are not entitled to agree to violate the Park Rules, that estoppel does not apply. I find the tenant breached the Park

Rules by erecting a shed beyond where a straight line of fencing shows in all other site on the 2012 aerial photo. Furthermore, I find that the landlord was being patient and reasonable with the tenant is both blind and elderly by waiting for the fence to be in need of replacement before taking the old fence down and building a new fence on the established property line. In addition, I do not agree with the tenant or the tenant's advocate that the new fence is encroaching onto the tenant's site.

Based on the above, I find that the tenant has failed to meet the burden of proof and that there is no merit to the tenant's claim. **I dismiss** the tenant's application in full without leave to reapply due to insufficient evidence.

### Conclusion

The tenant's application is dismissed in full due to insufficient evidence without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 5, 2017

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Residential Tenancy Branch