



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OLC ERP PSF AT

### **Introduction:**

Both parties and a witness attended the hearing and gave sworn testimony. I find the landlord was served with the Application for Dispute Resolution hearing package by registered mail. He acknowledged receipt. I find the documents were legally served pursuant to sections 81 and 82 of the *Manufactured Home Park Tenancy Act* (the Act). The tenant applies for orders as follows:

1. An order that the landlord comply with the Act;
2. An order that the landlord do emergency repairs to allow the tenant access pursuant to section 24 of the Act; and
4. That the landlord protect their peaceful enjoyment pursuant to section 22 of the Act.

### **Issues to be Decided:**

Has the tenant proved on the balance of probabilities that the landlord is not complying with the Act and not doing repairs to protect their peaceful enjoyment and access to their site?

### **Background and Evidence:**

Both parties and the park manager attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The tenant explained the situation as follows:

1. He has lived in the park with his mother for about 23 years.
2. His mother died about 2 years ago and her will is in probate.
3. He is an executor of her will; his brother who was also executor declined the position and is in dispute with him about the contents of the will.
4. As executor, he is to protect his mother's assets and he lives in the trailer and continues to pay rent.
5. There is a 3 foot easement at the side of his trailer to which he must have access to handle the appliances on that side.

6. A relative, who is the son of the mother's sister, is a part time resident of the trailer beside his.
7. The 3 foot easement is partially blocked by cinder blocks, shrubs and one or two tree trunks which the tenant alleges were planted by his Aunt or her family. There was also a problem with parking which has been resolved.
8. The relative disclaims responsibility for the cinder blocks and plantings.
9. The tenant requests that the landlord clear the 3 foot easement so he can use a dolly to work on the appliances. He says he cannot afford to do it himself.
10. He also requests the landlord to require the neighbour tenant to clear the debris that he has dumped at the back of his trailer.

The landlord explained their position in the dispute:

- a. The owner bought the park in 2017 so they have no knowledge of who did the plantings or placed the cinder blocks around them in the easement.
- b. Originally two sisters owned the two adjoining trailers and no history of disputes were recorded.
- c. They believe that access is still available around the tree stumps and bushes.
- d. The tree stump originated from a tree cut down with the assistance of park staff in 2015; the sisters had allowed it to grow for the prior 20 years.
- e. According to park rules and regulations, it is the tenant who claims the easement to maintain the easement, including cutting the grass, trimming trees and removing debris.
- f. They accept the tenant is a tenant in his position as executor but they have been unable to obtain any verification that he is executor or of the progress of the probate or dispute.
- g. They detail their responses to the tenant's complaints:
  - (i) September: letter sent to adjoining tenant re. vehicle blocking access.
  - (ii) October: letter to adjoining tenant re. debris to be removed
  - (iii) October: letter to adjoining tenant regarding plant debris and asking for alternative solutions.
  - (iv) February: call from tenant regarding altercation over access  
Sent a final notice with deadline re. access to easement  
Adjoining tenant sent response allowing access to easement but not clarifying responsibility for clearing of debris.

In evidence are maps showing the location of the two manufactured homes with the easement outlined; I could not see the location of the tree stump or stumps but the landlord said he had looked at the stump and it appeared to be 50% on each property.

**Analysis:**

Section 22 of the *Manufactured Home Park Tenancy Act* provides that a tenant is entitled to quiet enjoyment including freedom from unreasonable disturbance and (d) use of common areas for reasonable and lawful purposes, free from significant interference. Section 24 states a landlord must not unreasonably restrict access to a park by the tenant. I find in this case the landlord is not restricting access but the weight of the evidence is that a stump, blocks and plantings are restricting access to the 3 foot easement along the side of the tenant's trailer. I find as executor it is his responsibility to protect the assets of his mother and prepare it for sale if necessary.

I find a summary of the relevant Regulations and Bylaws of the park state that

1. Residents are responsible for keeping their spaces clean, including keeping lots weed free, cut, raked and trimmed. Tenants must remove their own debris. Lots not kept will be put in order by the management for which a flat fee of \$25 will be charged each and every time.
2. Tenants are responsible for trimming their own trees. If they are too big to handle, call the office for assistance.

I note the tenant claims the responsibility for removing the cinder blocks, debris and bushes from his easement should be his neighbours for they made this planting in the easement. His relative neighbour denied this to the landlord. I find the park rules clearly state it is the tenant's responsibility to clear and maintain his own easement. I find he has provided insufficient evidence to shift this responsibility to his neighbour. Therefore, I find if he wants his easement cleared of old plantings and blocks, it is his responsibility to do it. He has stated he cannot afford this. I note as executor who is preserving an asset in the will, he may pass this bill on to the lawyer to be paid out of estate funds.

In respect to the tree stump in front of the easement, I find this originated from a tree cut down with assistance of park staff in 2015. Whether or not it had been allowed to grow by the previous owners over 20 years, it may or may not have been a tree originally planted by the park. I find the weight of the evidence is that the stump was left by park staff when it was cut down and it should be removed by park staff at expense of the park so that the tenant may have free access to his easement to use a dolly to maintain appliances and that side of the trailer.

I find the landlord has attempted to protect the peaceful enjoyment of the tenant which has been significantly disturbed by the ongoing dispute with this neighbour relative. The

landlord's letters to the neighbour and some correcting behaviour by the neighbour support the fact the landlord has not been negligent in addressing his issues. However, the evidence indicates some legal intervention was necessary so this dispute was filed. I note the Rules and Bylaws of the park allow the landlord to remove debris dumped by a tenant and to charge the tenant for the service. I encourage the landlord to exercise this option if they find a tenant is significantly disturbing another tenant by dumping debris on the other tenant's lot.

**Conclusion:**

I find the tenant responsible to clear and maintain his three foot easement. I find the landlord responsible to remove the tree stump that is blocking some access to the easement. The filing fee was waived.

**I HEREBY ORDER the landlord to remove the tree stump that is blocking some access to the tenant's 3 foot easement and to inspect and ensure the neighbour is not dumping debris behind the tenant's trailer..**

**I HEREBY ORDER the tenant to clear and maintain his 3 foot easement.**

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: April 25, 2018

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Residential Tenancy Branch