



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT MNDCT OLC PSF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order that the landlord provide services or facilities required by the tenancy agreement or the law; an order that the landlord comply with the *Act*, regulation or tenancy agreement; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other.

During the course of the hearing the tenant withdrew the application for an order that the landlord provide services or facilities required by the tenancy agreement or the law.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for unreasonable disturbance and loss of income?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically that the landlord apply the rules of the manufactured home park consistently?

### Background and Evidence

**The tenant** testified that this tenancy began in October, 2013 and the tenant still resides in the tenant's manufactured home within the manufactured home park. Rent in the amount of \$232.00 per month is currently payable on the 1<sup>st</sup> day of each month and there are no rental arrears.

The landlord provided the tenants with a notice dated June 1, 2018 indicating that new water lines would be installed and the hookup of the above-ground portion would be the tenant's responsibility, including the on-off valve, pressure regulator and heat tape. On August 13, 2018 the landlord provided another notice to the tenants indicating that the majority of the tenants did not agree, and the landlord agreed to pay for the water hook-ups. Copies of those notices have been provided as evidence for this hearing.

The tenant seeks monetary compensation in the amount of \$5,000.00 and testified that the tenant's right to quiet enjoyment has been violated due to the fact that the landlord told the tenants he would not provide water. The landlord has since gone back on that statement and is providing that essential service, but at the time, the tenant was looking for a house sitter. The risk of having no water scared away a house-sitter in mid-July. The tenant had advertised for a house-sitter in mid-June, 2018 for a month prior to the tenant's departure, to stay in the tenant's manufactured home for 2 months and 12 days. Three potential house sitters were interviewed and all were disinterested because the water would be turned off for a period of time, which the tenant disclosed to them. As a result, the tenant had no income from roommates. The average room rental cost locally is \$600.00 to \$700.00; it's waterfront, renovated and a desirable place to live. The tenant is away for 2 or 2 ½ months, and departed on July 20, 2018 and is still away. No one is there now, but the tenant has friends house-sitting until September 10, which is under 30 days, and they are not paying any rent.

The tenant seeks monetary compensation of \$2,800.00 in lost income and \$2,200.00 for loss of quiet enjoyment as a result of the landlord's failure to ensure consistent water.

The tenant also seeks an order that the landlord apply the Rules of the Park consistently, specifically with respect to subletting. The tenant has seen some of the other tenancy agreements, which are the same as the tenant's. Further, the parties had been to Arbitration in November, 2017 and a copy of the resulting Decision has been provided as evidence for this hearing. It shows that the tenant had disputed a One Month Notice to End Tenancy for Cause that was issued for subletting, and the Arbitrator cancelled the Notice stating that the landlord had not provided sufficient

evidence to support the issuance of it. The tenant also seeks an amendment to the tenancy agreement to reflect that tenants are allowed roommates.

**The landlord** testified that he has never refused any essential service, but wanted to provide a new water system because the old one is failing. It may have been misunderstood, but the landlord said there would be a time period for tenants to hook into it. The landlord was never going to turn off the old system.

On August 8, 2018 the landlord received a letter from tenants stating that the tenants were not interested for various reasons. Just over half of the tenants were concerned, and the landlord addressed that in the notice dated August 13, 2018 saying that the down-time would be minutes and the landlord would pay for the plumber. At no time did the landlord or anyone say water would be cut off, so the landlord does not know why the tenant told house-sitters that.

With respect to subletting, the landlord testified that each tenancy agreement is different and stand-alone. The tenant's tenancy agreement was an assignment from a previous tenant, and a previous Arbitrator said it was okay. The tenant initialled each page, so it's binding. It is very clear that no subletting is permitted, but the landlord made it clear to the tenant that the tenant could have a roommate as long as the roommate was listed on the tenancy agreement. The landlord has asked the tenant to have anyone staying over 30 days added to the tenancy agreement. There are Park Rules, but they do not deal with occupants and guests. The landlord denies that another tenant or tenants were permitted to sublet. The only reason the parties were at Arbitration last year was because the landlord was obligated to issue a notice to end the tenancy for subletting without the landlord's consent, but the landlord wasn't able to prove it at Arbitration and the notice was cancelled.

The landlord also testified that he would be happy to sign a new tenancy agreement in the form used by the Manufactured Home Park Tenancy Association, which will specify no subletting, and the landlord will have to be aware of roommates. The monthly rental amount wouldn't change.

### Analysis

Firstly, I refer to Residential Tenancy Policy Guideline #19 - Assignment and Sublet, which differentiates:

- Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

- When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and a new agreement (usually called a sublease) is typically entered into by the original tenant and the sub-tenant. The original tenant remains the tenant of the original landlord, and, assuming that the original tenant moves out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the “landlord” of the sub-tenant.

In this case, it seems that neither party is opposed to roommates provided that they are named in the tenancy agreement, which I find is a binding contract. The tenant seeks an amendment to the tenancy agreement to reflect that tenants are allowed roommates, however is not opposed to adding subtenants to the tenancy agreement, and I dismiss that portion of the tenant’s application.

The tenant also seeks monetary compensation for the landlord’s failure to provide consistent water to the manufactured home site resulting in loss of income. In order to be successful in such a claim the onus is on the tenant to satisfy the test:

1. that the tenant suffered a loss;
2. that the loss was suffered because of the landlord’s failure to comply with the *Act* or the tenancy agreement;
3. the amount of such loss; and
4. what efforts the tenant made to mitigate any loss suffered.

The tenant testified that the risk of having no water scared away a house-sitter in mid-July, and the average room rental cost locally is \$600.00 to \$700.00 and is waterfront, renovated and a desirable place to live. There is no evidence before me to satisfy me that the tenant suffered a \$2,800.00 loss over the 2 ½ months, or what exactly the loss would be. I accept that a potential subtenant opted out for the water issue, but there is no evidence before me that the landlord ever said there would be no water, and the landlord disputes that.

With respect to loss of quiet enjoyment, I am not satisfied that the tenant has established that the landlord has failed to comply with the *Act* or the tenancy agreement.

The tenant’s application for monetary compensation is dismissed.

Since the tenant has not been successful with the application the tenant is not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenant's application is hereby 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 13, 2018

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Residential Tenancy Branch