



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MTN VIEW MHP INC. NO 661258  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP, PSF, RP, MNDCT, FFT

### Introduction

On October 11, 2018, the Tenant applied for a Dispute Resolution proceeding seeking an emergency repair Order pursuant to Section 27 of the *Manufactured Home Park Tenancy Act* (the “*Act*”), seeking that the Landlord provide services or facilities pursuant to Section 21 of the *Act*, seeking a repair Order pursuant to Section 26 of the *Act*, seeking monetary compensation pursuant to Section 60 of the *Act*, and seeking to recover the filing fee pursuant to Section 65 of the *Act*.

On October 12, 2018, the Tenant submitted an Amendment to her Application for Dispute Resolution seeking to increase the amount of monetary compensation she is seeking pursuant to Section 67 of the *Act*.

The Tenant attended the hearing with P.E. as her advocate. G.B. and A.K. attended the hearing as agents for the Landlord. All parties provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing package by hand on October 12, 2018 and the Landlord confirmed that this was received. Based on this undisputed testimony and in accordance with Sections 82 and 83 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenant advised that she served the Landlord with her evidence by hand on November 6, 2018. The Landlord confirmed that this was received and that he was prepared to respond to it. While service of this evidence does not comply with the time frame requirements of Rule 3.14 of the Rules of Procedure, as the Landlord was prepared to respond to this evidence, I have determined that it would not be prejudicial to proceed. As such, this evidence was accepted and considered when rendering this decision.

The Landlord advised that he served his evidence to the Tenant by registered mail on November 7, 2018 and the Tenant confirmed that she received this on November 14, 2018. However, as this evidence was deemed received after five days pursuant to Section 81 of the *Act*, I am satisfied that service of this evidence complies with the timing requirements of Rule 3.15 of the Rules of Procedure. Therefore, I have accepted this evidence and considered it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Tenant entitled to an Emergency Repair Order?
- Is the Tenant entitled to a Repair Order?
- Is the Tenant entitled to an Order that services of facilities be provided?
- Is the Tenant entitled to monetary compensation?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on August 1, 2018, that the current rent was established at \$390.00 per month, and that it was due on the first of each month.

#### **Tenant's submissions**

The Tenant stated that she purchased her manufactured home on August 1, 2018 and hired contractors to conduct renovations to her property. She was advised by these workers on September 8, 2018 that there was a sewage leak around and under her property, but it was uncertain how long this had been leaking for. She notified the Landlord of this issue; however, the sewage continued to backup for the next four days. On September 13, 2018, she submitted that a plumbing company attended and sprayed the sewage with water and spread it around and under the property. She was advised

by a local Health Inspector on September 21, 2018 that the cleanup was completed; however, when she attended the property, the smell of sewage was overwhelming.

She stated that the Landlord did not clean up the sewage under the manufactured home and as such, the Health Inspector advised her not to return to the property until it has been cleaned. On September 28, 2018, the Landlord advised her that the clean up was completed; however, she responded that under the manufactured home was not cleaned and he stated that the sewage will dissipate. She finally spoke with the Health Inspector on October 11, 2018, who stated that she was unable to view any sewage under the home. The Tenant submitted that she inspected the property with the Landlord and he advised that he would wait to conduct further remedies based on the Health Inspector's recommendations.

The Tenant received the Health Inspector's recommendations on October 13, 2018, which indicated that a third party conduct a proper remediation. She submitted into evidence an estimate from a third party company that outlined the cost to remediate the soil around and under the manufactured home. She requested that the Landlord comply with the Health Inspector's recommendations and have the third party conduct an inspection by October 29, 2018.

She contends that this septic tank leak is a health hazard where a simple cosmetic fix will not remedy the situation. She advised that she went into her home on October 13, 2018 to turn on the heat and she discovered that there were hundreds of flies in her home. She stated that she was advised not to enter her home by the Health Inspector as it was uninhabitable.

The Tenant is seeking compensation in the amount of **\$1,170.00** for September, October, and November 2018 pad rent that she had paid, **\$2,184.00** for September, October, and November 2018 rent that she is paying at an alternate accommodation, **\$126.00** for having to pay to have the interior of her home cleaned, and **\$1,000.00** for aggravated damages due to her suffering through this situation.

### **Landlord's submissions**

The Landlord confirmed that there was a sewage spill on the Tenant's pad around September 8, 2018. The septic tank is shared with other sites and the spill was caused by another tenant throwing inappropriate materials into the tank, causing the overflow. Once notified of this spill, the Landlord took immediate action and had the septic tank pumped out and the drain snaked on September 10, 2018.

He stated that as per the instructions of the Environmental Health Officer (the "Officer"), he had the contaminated sewage cleaned up, and once completed, he notified her by sending pictures and details of the work done on September 22, 2018. He stated that she inspected the site and confirmed on September 24, 2018 that the sewage had been cleaned up, that "no additional work was needed", but that she was not able to confirm if there was sewage under the rental unit.

Upon a follow-up site visit on October 12, 2018, the Officer inspected under the rental unit and concluded that "there was no evidence of sewage"; however, on October 19, 2018 she recommended that the Landlord have "a third party professional conduct an inspection of the space to assess the level of sewage contamination and determine if any remediation work is required to safeguard health."

As per this recommendation, the Landlord contracted a third party professional to inspect the site. On November 1, 2018, this company reported that they "inspected all areas under the trailer and have not smelled any sewer anywhere", determined that there is "no evidence of any solids that need removal", and recommended to "scrape back the top layer of dirt and gravel, primary [sic] for cosmetic reasons, and regrade the area." The Landlord then emailed the Tenant on November 2, 2018 to advise her of these recommendations and informed her that arrangements will be made to have this cosmetic work completed.

The Landlord cited an email from the Officer on November 8, 2018 that confirmed that the recommendations of the third party professional "meet the intention of [her] recommendation" to address this matter. He advised that he could have this recommended work completed; however, the Tenant objects to this work being conducted. He also emphasized that at no time did the Officer state that the Tenant could not go into her home or that it was uninhabitable. As well, he advised that the Tenant was unsuccessful in having the Health Authority declare the unit uninhabitable.

The Landlord acknowledged that there was some disruption to the Tenant of approximately two weeks, he reiterated that the unit was not uninhabitable, and he stated that she could continue her renovations after the remediation was completed. As well, he advised that the Tenant asking for reimbursement for the pad rent for September, October, and November 2018 in addition to compensation for the alternate accommodation for the same period amounts to double dipping and should not be awarded.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 26 of the *Act* requires that the Landlord maintain the manufactured home park in a state of decoration and repair that complies with the health, safety, and housing standards required by law.

Furthermore, Section 27 of the *Act* outlines what would be considered an emergency repair as well as the Landlord's and Tenant's duties when an emergency repair is required.

In reviewing the totality of the evidence before me, I am satisfied that the septic tank spill would be considered an emergency repair, and I am also satisfied that the Landlord took immediate action to remedy this issue. While the Tenant alleges that the site is still uninhabitable, the consistent evidence before me is that the Landlord took immediate action to address and clean up the septic tank spill. Furthermore, the Landlord complied with the additional recommendations of the Officer and contracted a third party professional to assess the situation to have this issue fully remedied to the Officer's satisfaction. When weighing the evidence on a balance of probabilities, I do not find that there is sufficient evidence to support that the site is uninhabitable. I am satisfied that the Landlord's evidence is more compelling and persuasive, and that upon completion of the recommended work by the third party professional, the situation will be completely addressed.

As it is the Landlord's responsibility to maintain the manufactured home park in a state of decoration and repair that complies with the health, safety, and housing standards required by law, I find that he is responsible for rectifying this emergency repair issue satisfactorily from the beginning of the occurrence to the conclusion. As it was determined by the Officer that the third party professional's recommendations satisfies the intention of her recommendation, I find that this would be basis to determine a reasonable date that this issue would be rectified to its conclusion. As the third party professional was available to commence this work in early November 2018, I am satisfied that November 15, 2018 would be a reasonable date for the Landlord to have been able to rectify this situation to its completion. Consequently, I find that the Tenant should be compensated in the amount of pad rent for September, October, and half of November 2018 totalling **\$975.00**.

Considering this, as the Tenant has been awarded compensation for her pad rent, I do not find it reasonable that the Tenant should also be awarded additional compensation for the alternate accommodation. As such, I dismiss her claim for \$2,184.00 in its entirety.

With respect to the Tenant's claim of \$126.00 for the cost to have the interior of her home cleaned, I find it more likely that not that an unexpected situation such as this would have some negative repercussions on the ability to upkeep the sanitary conditions of the manufactured home during this period. As such, I find it reasonable that this compensation be awarded to the Tenant to satisfactorily rectify this issue. Consequently, I grant the Tenant a Monetary Order in the amount of **\$126.00**.

Regarding the Tenant's claim of \$1,000.00 for aggravated damages, I find it important to note that Policy Guideline # 16 states that "Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence." In this particular case, I find that the Landlord had taken the necessary steps to have this septic spill fixed and comply with the direction of the Officer to remedy any further issues. As such, I do not find that there is any evidence of deliberate or negligent action on behalf of the Landlord. Consequently, I dismiss this claim in its entirety.

With respect to the recommended work by the third party professional to bring closure to this issue, it appears as if this work has not been completed as of yet. As such, I Order the Landlord to have the third party professional commence the required remediation, pursuant to the Environmental Health Officer's approval, within two weeks of the date of this decision.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Landlord to the Tenant**

Item	Amount
Reimbursement of September rent	\$390.00
Reimbursement of October 2018 rent	\$390.00

Reimbursement of partial November 2018 rent	\$195.00
Cleaning	\$126.00
Filing fee	\$100.00
<b>Total Monetary Award</b>	<b>\$1,201.00</b>

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$1,201.00** in the above terms. In addition, the Tenant is permitted to withhold this amount from future months' rent until the debt is exhausted.

In addition, I Order the Landlord to have the recommended remediation commence within two weeks of the date of this decision.

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: December 10, 2018

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Residential Tenancy Branch