



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUNSHINE COAST RV PARK  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, PSF, MNDCT, OT, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* ("Act") for:

- an order requiring the landlord to comply with the *Act*, *Manufactured Home Park Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 55;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 58;
- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 60;
- an order for other unspecified relief; and
- authorization to recover the filing fee for this application, pursuant to section 65.

The landlord's two agents, the tenant, and the tenant's three agents attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 65 minutes.

"Landlord SW" and "landlord PJ" confirmed that they were the owners for the landlord company named in this application and they had permission to speak on its behalf (collectively "landlord"). "Witness AH," who is the landlord's park manager since 1995, testified on behalf of the landlord at this hearing. The witness was excluded from the outset of the hearing and was recalled by the landlord later during the hearing. Both parties had equal opportunities to question the witness, who was affirmed under oath.

The tenant confirmed that his three agents, law student MAM (“tenant’s agent”), “tenant agent MOM” (supervising lawyer), and tenant agent JMW (“tenant’s neighbour”), had permission to speak on his behalf. Tenant agent MOM did not provide submissions at this hearing.

Landlord SW confirmed receipt of the tenant’s application for dispute resolution hearing package. In accordance with sections 82 and 83 of the *Act*, I find that the landlord was duly served with the tenant’s application.

The tenant’s agent confirmed that she received the landlord’s evidence package late on August 9, 2019 and that she did not have a chance to properly go through the evidence or to respond to it. Landlord SW stated that he was out of town and that he did not get a chance to serve the evidence until August 9, 2019, but he was in time for uploading the evidence to the RTB online website. I notified both parties that I could not consider the landlord’s evidence at this hearing or in my decision because it was received late by the tenant, less than 7 days prior to the hearing, contrary to Rule 3.15 of the RTB *Rules of Procedure*. I find that the tenant was prejudiced because he was unable to properly review all of the evidence with his legal counsel or respond to it because of the lateness.

Pursuant to section 57(3)(c) of the *Act*, I amend the tenant’s application to remove the name of landlord SW as a landlord-respondent. The tenant requested this amendment prior to the hearing, indicating that landlord SW was merely an agent for the landlord company, not the actual landlord. Both parties consented to this amendment during the hearing

During the hearing the tenant did not provide any evidence for his application for other unspecified relief. Therefore, this application is dismissed without leave to reapply.

#### Issues to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to provide services or facilities required by law?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and witness AH, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began approximately 27 years ago in about June 1992. The landlord purchased the park in December 2018 and continued the tenancy with no written tenancy agreement signed. Monthly rent in the amount of \$350.00 is payable on the first day of each month. No security deposit was paid by the tenant. The tenant continues to reside in the manufactured home, which he owns, and rents the manufactured home site from the landlord. The parties attended a previous hearing on June 11, 2019, after which an original decision of the same date was issued, and a corrected decision was issued on June 17, 2019. The previous Arbitrator ordered that the utilities be turned back on by the landlord, which was done on June 11, 2019. The file number for that hearing appears on the front page of this decision.

The tenant seeks an order for the landlord to provide clear road access to the manufactured home site, pursuant to section 26 of the *Act*. The tenant's agent stated that the road leading up to the tenant's manufactured home site is poorly maintained, no vehicles can make it to the tenant's site, and there is an accumulation of objects that the tenant cannot remove or carry because of his disability.

The landlord disputes the tenant's claim for an order to clear the road. Landlord SW maintained that the road is clear, the landlord drove down the road to serve the tenant with paperwork just a few days prior to this hearing, and the tenant hikes and bikes down the road all day with no issue. Landlord SW, landlord PJ and witness AH all testified that the tenant has left debris all over his manufactured home site and has failed to clean up. Witness AH further stated that the landlord made a roadway for the tenant and offered to help the tenant clean up, by bringing a bin that was not used, to dispose of garbage.

The tenant seeks a monetary order of \$16,882.00 plus the \$100.00 application filing fee. The tenant seeks \$7,500.00 for aggravated damages and \$7,500.00 for harassment, pursuant to sections 7 and 87 of the *Act* and Residential Tenancy Policy Guideline 16. The tenant claims that he suffered 41 days with no utilities and it affected his mental health and caused fear.

The tenant's agent claimed that under section 21 of the *Act* and Residential Tenancy Policy Guideline 22, the tenant's utilities were excluded from rent, he had no hydro for 41 days, and he was unable to clean, bathe or cook. The tenant's agent maintained that the Arbitrator at the previous RTB hearing ordered that the landlord turn the utilities back on, which the landlord did on June 11, 2019. She explained that the landlord breached the *Act* and it is evident in the previous Arbitrator's decision.

The tenant's agent stated that the tenant incurred daily food and bathing expenses of \$1,882.00, for which he did not have receipts, but was clearly evident in the tenant being alive from purchasing food to survive. She confirmed that the tenant was coerced, threatened and harassed by the landlord. The tenant's neighbour confirmed that she had a police file number but no police report.

The landlord disputes the tenant's entire monetary claim. Landlord SW confirmed that the tenant had access to the utilities, as the laundry and shower facilities were unlocked at the site. He stated that the tenant had no proof of his incidental costs such as food, and he did not harass the tenant. Landlord SW and landlord PJ both testified that the tenant was verbally abusive and threatening towards them. Witness AH maintained that she saw the tenant being aggressive towards landlord SW and that she never witnessed the landlord being threatening towards the tenant.

### Analysis

I dismiss the tenant's application for an order requiring the landlord to provide clear road access to the manufactured home site. I find that the tenant failed to provide sufficient documentary or witness evidence to show that the landlord has caused the accumulation of objects on the road, blocking the tenant's access. Three people, including both landlords and witness AH, confirmed that the landlord cleared the road for the tenant to use. Landlord SW confirmed that there is no debris or other items blocking the tenant's access, such that he has been able to use the road himself, recently.

Pursuant to section 60 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's monetary application of \$16,882.00, without leave to reapply.

The tenant claimed \$7,500.00 for aggravated damages and \$7,500.00 for harassment because he said the landlord harassed, coerced, and threatened him. The tenant did not provide copies of any police reports, only a police file number, which does not allow me to access the confidential police database. The tenant did not call any police officers or other witnesses to testify at this hearing. The tenant referenced two previous RTB decisions for aggravated damages but did not provide copies of these to the RTB or the landlord, in order to allow me to review them or to allow the landlord to respond. I am not bound by previous decisions made by other Arbitrators, not related to this tenancy and application. The tenant did not provide a specific breakdown for the above \$15,000.00. The tenant did not provide medical records or receipts for medical treatment to prove his claims of fear and mental health damages. This claim for \$15,000.00 is dismissed without leave to reapply.

The tenant claimed \$1,882.00 for "incidentals," claiming that these were costs for daily food and bathing. However, the tenant did not provide receipts for the above expenses, in order to satisfy part 3 of the above test. He did not provide a breakdown for what was food and what were the bathing costs. The tenant's agent stated that the tenant would not be alive if he had not bought food in order to survive over the 41 days without electricity. However, I do not find this to be a satisfactory explanation for why the tenant would not provide receipts for expenses that he claims to have paid. This claim is dismissed without leave to reapply.

As the tenant was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

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: August 15, 2019

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Residential Tenancy Branch