



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ZAM ENTERPRISES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC RP PSF RR FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on April 23, 2020. The Tenants applied for multiple remedies, pursuant to the *Manufactured Home Park Tenancy Act* (the "Act").

The Tenants attended the hearing with their advocate, collectively referred to as the "Tenants". The Landlord did not attend the hearing. The Tenants provided registered mail tracking information to show that they sent a package to the Landlord on February 21, 2020. The Tenants specifically stated that they sent the Landlord a copy of the Notice of Dispute Resolution Proceeding, a copy of their application form, the respondent instructions, their amendment, a copy of the previous decision, and their evidence. Pursuant to section 83 of the Act, I find the Landlord is deemed to have received these documents 5 days after they were mailed, on February 26, 2020.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

During the hearing, the Tenants clarified what they are seeking in this application. The Tenants applied for several grounds, but their requests can be distilled down to a couple of items. They are seeking to have their fence replaced (it was taken down by the Landlord last August 2019), and they are looking for a reduction in rent due to the loss of use of their fenced yard (from August 2019, until it is replaced).

I note the Tenants filed an application last fall to have the Landlord repair/replace the fence. Following that hearing, a decision was issued regarding the Tenants' requests and the Landlord was given until December 31, 2019 to repair the fence. In that decision, the arbitrator determined that the Tenants were entitled to exclusive use of the fenced area in question, and the Landlord did not have the legal authority under the Act to remove the fence in the manner they did. Given a decision has already been rendered with respect to the repair/replacement of the fence, I find I have no authority to re-adjudicate this matter. An order was made, and the Landlord is expected to obey the order made last fall. I decline to issue further orders with respect to the repair/replacement, as the previous order made is still binding and final.

I will focus this proceeding on the Tenant's request for a rent reduction. Any other matters not covered in either the Tenant's request for the fence repair/replacement or for a rent reduction (addressed below), will be severed off from this application, with leave to reapply.

### Issue(s) to be Decided

- Are the Tenants entitled to a rent reduction for the loss of their fenced yard?

### Background and Evidence

The Tenants stated that they bought this mobile home around 12-13 years ago, and when they bought it, there was a fence around the yard. The Tenants explained that the fenced yard is a necessity and is essential to their tenancy because they have dogs, and also because they had many belongings stored inside the fenced area. The Tenants stated that the large fenced yard was a huge part of why they moved here.

The Tenants stated that they have lived at this home site, and used the yard for the entire time, up until August 8, 2019, when the Landlord took the fence down. The

Tenants stated that since that time they have suffered nearly a complete loss of use of the yard they had become accustomed to. More specifically, the Tenants stated that they have dogs, and they are no longer able to let their dogs out in the yard ever since the fence was taken down. The Tenants stated that the loss has had a significant impact on how they use their manufactured home site. The Tenants stated that it has impacted their recreation in the yard, since they have lost almost all privacy since the fence was taken down, and they also have less security for storing their belongings and parking/storing boats or cars.

The Tenants stated that the Landlord does not have any regard for the tenancy laws, and despite the Tenants telling the Landlord they did not agree with the fence being taken down, the Landlord proceeded to do it anyways. The Tenants stated that they never received any formal notice in writing from the Landlord that they would be taking down the fence or restricting this part of their tenancy. The Tenants stated that at the last hearing, the Landlord tried to argue that it is not the Tenants property because the fenced area was larger than what the site plan had listed. However, during the last hearing the Landlord was estopped from relying on the site plan and was ordered to restore the Tenants' use of the fenced area.

The Tenants pay a monthly pad rent in the amount of \$344.00 and they are seeking a rent reduction of \$150.00 per month from August 2019, until the fence is restored and replaced to what it was prior to August 8, 2019.

### Analysis

A party that makes an application against another party has the burden to prove their claim. In this case, the burden of proof rests with the Tenants.

The Tenants are seeking compensation in the form of a rent reduction for loss of use of their fenced yard starting in August 2019. I note that section 1 of the Act defines a "service or facility" as:

*"service or facility" includes any of the following that are provided or agreed to be provided by a landlord to the tenant of a manufactured home site:*

*(a) water, sewerage, electricity, lighting, roadway and other facilities;*

*(b) utilities and related services;*

*(c) garbage facilities and related services;*

- (d)laundry facilities;
- (e)parking and storage areas;
- (f)recreation facilities;

[My emphasis underlined]

***Terminating or restricting services or facilities***

- 21** (1)A landlord must not terminate or restrict a service or facility if
- (a)the service or facility is essential to the tenant's use of the manufactured home site as a site for a manufactured home, or
  - (b)providing the service or facility is a material term of the tenancy agreement.
- (2)A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a)gives 30 days' written notice, in the approved form, of the termination or restriction, and
  - (b)reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I note the Tenants had exclusive use of the fenced yard for the last 12-13 years, up until August 8, 2019, when the Landlord took their fence down, without consent. I accept that that the Tenants have suffered a substantial loss in the value of their tenancy. I also accept the Tenants statements that the fenced yard is essential to their use of the home site, given they have dogs and storage needs, and they live in a smaller sized home. I find the Landlord breached section 21(1)(a) of the Act when they took the fence down in August of 2019. I find the Tenants are entitled to compensation in the form of a rent reduction, due to the Landlord's breach of section 21 of the Act.

I find it important to note the following *Policy Guideline #22 – Termination or Restriction of a Service or Facility*:

### *C. RENT REDUCTION*

*Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.*

*If the tenancy agreement doesn't state who is responsible for any added service or facility, not provided by the tenant, after the commencement of the tenancy, and there is a cost involved in obtaining the service or facility, the landlord is responsible for the cost, unless the landlord has obtained the written agreement of the tenant to be responsible for the cost.*

I find the Tenants are entitled to a \$150.00 rent reduction from August 2019, until the fence is repaired/replaced, as previously ordered in the October 2019 hearing. To reflect this, I grant the Tenants a monetary order against the Landlord for \$1,350.00, which is comprised of \$150.00 per month from August 2019, until April 2020. Going forward, the Tenants may withhold \$150.00 from monthly rent until the fence has been repaired, as previously ordered.

Pursuant to section 65 of the Act, and given the Tenants were successful in their application, I award the recovery of the filing fee he paid for this application.

Accordingly, pursuant to section 65 of the Act, I grant the Tenants a monetary order in the amount of \$1,450.00, which is due to the Landlord's breach of section 21 of the Act (reduction in value of the tenancy), and \$100.00 in recovery of the filing fee.

### Conclusion

I grant the Tenants a monetary order in the amount of \$1,450.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 24, 2020

---

Residential Tenancy Branch