



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WOODLAND MOBILE HOME PARK LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ORL, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Manufactured Home Park Tenancy Act* ("Act") for an order that the Tenant comply with the Manufactured Home Park Rules ("Park Rules"); and to recover the \$100.00 cost of their Application filing fee.

Two agents for the Landlord, H.M.A. and L.D. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. No one appeared on behalf of the Tenant. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only persons to call into the hearing were the Agents, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Agents.

I explained the hearing process to the Agents and gave them an opportunity to ask questions about the hearing process. During the hearing the Agents were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agents testified that they served the Tenant with the Notice of Hearing documents and evidentiary submissions by putting them in the rental unit mail box on March 30, 2020. The Agents said that all the evidence they uploaded to the RTB was included in the package left in the mail box. I find that the Tenant was deemed served with the Notice

of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agents in the absence of the Tenant.

### Preliminary and Procedural Matters

The Agents provided the Landlord's email address in the Application and confirmed it in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order for the Tenant to comply with the Park Rules?
- Is the Landlord entitled to recovery of the Application filing fee?

### Background and Evidence

The Agents said that the periodic tenancy began on July 29, 2014, with a monthly pad rent of \$524.00, due on the first day of each month. The Agents said that Agent, H.M.A., is a new owner of the Park and that the previous owner was "lackadaisical in getting people to abide by the basic Park Rules." However, since H.M.A. began managing the Park, he has been resolute in cleaning up the Park in order that it be a pleasant place for all tenants

The Agents testified that they seek an order for the Tenant to comply with the Park Rules, which the Agent, H.M.A., said has been a problem with the Tenant since he moved into the Park. The Agent pointed out that documents 8 to 10 of the Landlord's bulk evidence package sets out the Park Rules, which the Tenant initialed and signed on July 29, 2014.

### Extra Vehicles/Trailers

The Agent said that in the last month prior to the hearing, the Tenant had his boat parked, a motor home, camper trailer, and his truck parked out front of his pad lot. The Agent said: "He has two parking spaces filled with trailers with sea-dos, and

another construction trailer. "He leaves his truck and/or his boat and/or his camper trailer, which is out there right now."

The Agents directed my attention to photographs they submitted showing these vehicles/trailers parked beside the Tenant's lot in the Park. They also submitted a copy of a photograph taken from overhead, which has the Tenant's lot lines set out, and illustrates that the Tenant's truck and trailer are parked outside of the Tenant's lot lines, extending into the driving lane of the Park.

The Agents submitted a copy of the Park Rules that form part of the tenancy agreement between the Parties. The first clause in the Park Rules states:

1. Tenant acknowledges reading the rules including pages 1 through 11, that form part of this Lease, and acknowledges that they are reasonable and material and agrees to observe and be bound by these rules.

On page 10 of the Park Rules, Item "H. Vehicles" states that the Tenant agrees to "A maximum of two vehicles permitted per Lot." This item goes on:

2. Parking area shall be limited to the area in-front of the trailer and yard and shall not exceed past the front entrance steps into the yard.

...

7. ... No additional storage of motor vehicles or recreational vehicles will be permitted at [the Park].

...

10. Vehicles not complying with the above rules shall be removed from [the Park] at owner's expense.

The Agents said they have tried to communicate with the Tenant to resolve this matter; however, they said the Tenant is not very pleasant to deal with. The Agents submitted a recording of a voicemail message that the Tenant left at the Park Office, in which the Tenant refers to letters he has received from the Agents. The Tenant curses at the Agents and threatens to sue them.

The Agent, L.D., said:

He continues to do what he wants to do. He's even come into the office around

the dogs and parking. [H.M.A.] and I were in the back part of the office. He came in here screaming and yelling and it was quite intimidating.

Unauthorized Dog(s)

The Agent cited document #17 in the Landlord's bulk evidence, dated October 28, 2019. This document is a copy of a letter to the Tenant stating:

This letter is a follow up from a conversation we had in the office regarding notice that was sent to you.

You had told us that no dogs have been at your home and yet again on October 25<sup>th</sup>, 2019 a dog was at your residence. We must insist that you let your company be aware that if they are to bring their dogs to the park that they must stay in the vehicle. It is the tenant's responsibility on the behaviors of their guests.

Without prejudice,  
[signed]  
[L.D.  
HMA]

Item F. "Pets" of the Park Rules states:

1. No dogs or Cats and No visiting Dogs. Except Registered Guide Dogs.
2. The pet population is controlled by the Landlord; no pet, whether mammal, bird, reptile, insect or arachnid may be brought into the park or acquired after occupancy commences without the prior written approval of the Landlord.

The Agent submitted a statement dated March 25, 2020, signed by three people, which states: "On the 23<sup>rd</sup> of March at about 12:30 I witnessed a pick up with cab drive towards the end of [address] and stop at unit [Tenant's unit]. It sat for a few seconds and at that point I saw a dog being led from that residence to the pick up truck."

The Agents said that neighbours "...told me that it is crapping on the property and nothing is being done."

In their bulk evidence, the Agents submitted copies of letters they have written to the Tenant warning of his breach of the Park Rules, and giving him a deadline by which the breach(es) must be rectified. The letters also state that failure to remedy the breaches “will result in arbitration.” These letters with similar comments are dated:

- November 9, 2017,
- November 17, 2017,
- November 25, 2017,
- April 16, 2019,
- May 21, 2019,
- June 15, 2019, and
- October 28, 2019.

The Agents said that on March 15, 2020, they sent the Tenant “...his final notice and have taken this step [arbitration].” They said that an Order from the RTB will lead to other processes to deal with this situation.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

Section 32 of the Act states that a landlord may establish, change or repeal rules for governing the operation of the manufactured home park, as long as these rules are not inconsistent with the Act or regulation.

RTB Policy Guideline 8 states:

#### **Material Terms**

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the

overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

Section 5 of the Act provides that landlords and tenants may not avoid or contract out of this Act or regulation. Any attempt to avoid or contract out of the Act or regulation is of no effect.

I find that the Park Rules are identified as being “material” to the tenancy. Further, the Tenant initialled and signed his acceptance of them as material terms. This is further supported by the Agents’ evidence that the Tenant’s behaviour in ignoring the Park Rules affects other tenants. The Tenant’s extra vehicles and/or trailers narrow the roadway in which other tenants travel. Further, the presence of the unauthorized dog has led to animal feces on other tenants’ lots. I find that the Park Rules are in place to contribute to a comfortable, fair allotment of space and cleanliness in the Park.

#### Extra Vehicles/Trailers

During the hearing, the Agents testified and provided supporting evidence that the Tenant parks one to three extra vehicles, boats, and/or trailers at the Park, in contravention of Park Rules H.2 and 7, which I find form part of the tenancy agreement.

Based on the undisputed evidence before me, overall, I find that the Tenant breached the Park Rules, which form material terms of the tenancy agreement. I, therefore:

**ORDER THE TENANT** to remove all vehicles, trailers, boats or other such items from the Park, such that only two vehicles, trailers, boats or other such items are left within the boundaries of the Tenant’s lot, in order to remain compliant with the Park Rules, pursuant to section 5 of the Act.

Unauthorized Dog(s)

Section 18 of the Act provides that a tenancy agreement may contain terms prohibiting pets, or restricting the size, kind or number of pets a tenant may keep on the manufactured home site, and governing a tenant's obligations in respect of keeping a pet on the manufactured home park site.

Based on the undisputed evidence before me overall, I find that the Tenant has contravened clause F1 of the Park Rules, by having a dog in and around his manufactured home, lot, and the Park. I, therefore:

**ORDER THE TENANT** to remove and remain free of all pets from his manufactured home, lot, and the Park, in order to remain compliant with the Park Rules, pursuant to section 5 of the Act.

**The Tenant is cautioned** that failure to comply with the above Orders will entitle the Landlord to make a subsequent application(s) for compensation from the Tenant, and/or could form cause for ending the tenancy, pursuant to sections 7 and 40 of the Act.

Given that the Landlord is successful in their Application, I award them with recovery of the \$100.00 Application filing fee. The Landlord is provided with a monetary order in this amount from the Tenant.

Conclusion

The Landlord is successful in their Application for an order for the Tenant to comply with the Act, regulation and/or tenancy agreement. The Landlord is also awarded recovery of the \$100.00 Application filing fee, as set out in the accompanying Monetary Order for **\$100.00**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

The Tenant is **Ordered to** remove all vehicles, trailers, boats or other such items from the Park, such that only two vehicles, trailers, boats or other such items are left within the boundaries of the Tenant's lot, in order to remain compliant with the tenancy agreement, pursuant to section 5 of the Act.

The Tenant is **Ordered** to remove and remain free of all pets from his manufactured home lot and the Park, in order to remain compliant with the Park Rules, pursuant to section 5 of the Act.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 8, 2020

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Residential Tenancy Branch