



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, RR, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the *Manufactured Home Park Tenancy Act (Act)* for:

- an order requiring the landlord to make necessary repairs to the site;
- a reduction in monthly rent; and
- recovery of the filing fee.

The tenant attended the hearing; however, the landlord did not attend.

The tenant stated she served the landlord with her application for dispute resolution and Notice of Hearing by registered mail. The tenant provided the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. That number is listed on the style of cause page in this Decision. The tenant said the registered mail was received on August 18, 2020.

I accept the tenant's evidence that the landlord was served notice of this hearing in a manner complying with section 89 of the Act and the hearing proceeded in the landlord's absence.

The tenant was provided the opportunity to present her evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the submissions and or arguments are reproduced here.

### Preliminary and Procedural Matters-

In reading the tenant's documentary evidence, an additional issue became apparent, and that is whether this dispute fell under the jurisdiction of the Manufactured Home Park Tenancy Act.

I will therefore consider that additional matter in this Decision.

### Issue(s) to be Decided

Does the Act apply to this dispute?

If so, is the tenant entitled to an order for repairs to the manufactured home site, a reduction in monthly rent, and recovery of the filing fee?

### Background and Evidence

The tenant submitted that she began renting the manufactured home site in August 2010 and the current monthly rent is \$276.75.

The evidence also shows that the tenant has a manufactured home on the site that she rents to other tenants.

In support of her application, the tenant testified and submitted evidence stating that her manufactured home site is adjacent to a river, which has caused floods in the past. Over the course of the tenancy, the site upon which her manufactured home sits is eroding due to the floods and changing river flow. The tenant submitted pictures depicting the loss of the lot size and the proximity to the river, which is now substantially closer to her home than at the start of the tenancy.

The tenant submitted that she has asked the local municipality to assist, and was informed by the municipality that the work required "geotechnical engineering and/or hydrological engineering expertise", which the village did not have. The local municipality informed the tenant that the responsibility was the property owner. The tenant submitted a copy of the email from the village.

The tenant submitted further that she was informed by a manager from the Ministry of Forests, Lands, and Natural Resource Operations if she required permanent flood protection works, those would be the responsibility of the landowner and "would possibly require a Dike Maintenance Act approval depending on how many properties the dike protected and/or a Water Sustainability Act Change Approval, if for example,

you decided to go with some form of bank armouring”. The official also said that the applications would be submitted through Front Counter BC and take 140 days to adjudicate.

The tenant submitted that she has requested the landlord put in a dike to prevent further erosion and she has refused.

Therefore, the tenant submitted that she is entitled to the order for repairs requiring the landlord to install a dike to prevent further erosion from the river and to a reduction in monthly rent, as the landlord has failed to address the eroding manufactured home site.

### Analysis

Under section 77.1 of the Act, the director has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in a dispute resolution proceeding under Division 1 of this Part and to make any order permitted to be made.

In considering whether I have jurisdiction to decide this dispute, I looked at the *Dike Maintenance Act* referred to by an official with the Ministry of Forests, Lands, and Natural Resource Operations, listed in the tenant’s documentary evidence.

Section 2(2) of the *Dike Maintenance Act*, provides:

The inspector may

- (a) enter on any land and on a dike, with or without equipment, as necessary to carry out the purposes of this Act,
- (b) require a diking authority or a person on whose land a dike, other than a private dike, is located to repair, replace, renew, alter, add to, improve or remove a dike, or a part of a dike, or anything used in connection with a dike,
- (c) require a diking authority or a person on whose land a dike, other than a private dike, is located to construct or install a work or thing that in the opinion of the inspector is necessary to protect a dike or to increase its efficiency,
- (d) authorize and empower any diking authority or person, on conditions the inspector may impose, to
  - (i) place, construct, renew, alter, repair, maintain, operate and use any buildings, structures, machinery, ways, rails, roads, pipes, poles, towers, cables, wires, conduits, conveyors or other works on, along, across,

- through, over or under any dike, other than a private dike, or any land on which a dike is located, other than a private dike, and
- (ii) enter with or without equipment onto a dike, other than a private dike, or on land on which a dike is located, other than a private dike, for the purposes set out in subparagraph (i) or section 3,
- (e) require a diking authority to provide routine or special reports on the construction or maintenance of dikes for which the diking authority is responsible,
- (f) inspect or make an order for the inspection of any books or records in connection with the construction or maintenance of dikes in the possession or control of a diking authority,
- (g) carry out or order an audit of a diking authority's program of construction and maintenance of dikes for which the diking authority is responsible, and
- (h) subject to this Act and the regulations, do any other thing or require a diking authority to do any other thing relative to the construction and maintenance of dikes, including orders respecting flood hazard planning.**

Subsection (4) of the *Dike Maintenance Act* provides:

A person or a diking authority must not do any of the following unless it is done either with the prior written approval of the inspector or in accordance with the regulations made under section 8 (2):

- (a) lower, or cause or allow to be lowered, the elevation of a dike or decrease, or cause or allow to be decreased, the width or cross section of a dike;
- (b) install, or cause or allow to be installed, any culvert, pipe, flood box or any structure through a dike;
- (c) construct, or cause or allow to be constructed, any works on or over a dike or dike right of way;
- (d) alter, or cause or allow to be altered, the foreshore or stream channel adjacent to a dike;
- (e) **construct a new dike.**

[My emphasis added]

I further considered the *Water Sustainability Act*, also cited in the same email from the official with the Ministry of Forests, Lands, and Natural Resource Operations.

Section 6 of the *Water Sustainability Act* provides as follows:

- (1) Subject to this section, **a person must not divert water from a stream** or an aquifer, or use water diverted from a stream or an aquifer by the person, unless
- (a) **the person holds an authorization authorizing the diversion or use, or**
  - (b) **the diversion or use is authorized under the regulations.**

[My emphasis added]

I note this Act defines “stream” to include rivers.

After considering these two Acts cited in the tenant’s evidence, I find it highly unlikely that I have jurisdiction to order the landlord to construct a dike along the public river. Due to the uncertainty of jurisdiction under the *Manufactured Home Park Tenancy Act*, I decline to accept jurisdiction to resolve this dispute.

The applicant remains at liberty to pursue a remedy against the respondent in the applicable forum.

### Conclusion

I have declined to hear this application due to lack of jurisdiction under the *Act*.

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 25, 2020

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Residential Tenancy Branch