



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Stormwynn Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, MNDCT, RR, PSF, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Manufactured Home Park Tenancy Act* ("Act"), for an Order to reduce the rent for repairs, services or facilities agreed upon but not provided in the amount of \$266.50; for an Order for the Landlord to Comply with the Act or tenancy agreement; for a monetary order for damage or compensation under the Act, in an unspecified amount; for an order to provide services or facilities required by the tenancy agreement or law; and to recover the \$100.00 cost of their Application filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony. However, the Landlord did not attend. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process to the Tenant and gave her an opportunity to ask questions about the hearing process. During the hearing the Tenant was given the opportunity to provide her 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 Landlord 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 Tenant testified that she served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on September 23, 2020. The Tenant also said she sent all of

her evidence to the Landlord via a second registered mail package on September 30, 2020. I find that the Landlord 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 Tenant in the absence of the Landlord.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and she confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Before she testified, I advised the Tenant that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the Tenant indicated different matters of dispute on the application, the most urgent of which she said is the application to protect her home from the rising water of the nearby river.

I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request to provide repairs for the safety and security of the Tenant and her home; and the recovery of the filing fee at this proceeding. Therefore, the Tenant's other claims are dismissed, with leave to re-apply.

### Issue(s) to be Decided

- What repairs, if any, should the Landlord be ordered to make?

### Background and Evidence

The Tenant said she owns a manufactured home in a Manufactured Home Park, and she said that the tenancy began on July 15, 2016, with a monthly pad rent of \$266.50, due on the first day of each month.

The Tenant said that it is a complicated situation. She said:

I used to have 10 – 12 feet of yard, but now it is 2 - 3 feet. With spring flooding, my home is in jeopardy. I'm losing so much of my yard to the riverbank. The Geo Tech report said it was unstable and further erosion will put the river even closer to my home.

I asked the Tenant if she has discussed this with the Landlord, and the Tenant said:

Yes, for the past few years, more and more flooding has happened, and she says she will put rip rap in. However, nothing has been done to address the river bank. In the Geo Tech report there are pictures. Out my back window you can see the water going around the pole. Who owns the pole? I've had no response, and I've been asking for sand bags, and being told not to run her business or to listen to anyone else.

I asked the Tenant what she wants the Landlord to do about this situation, and she said:

Stabilize the river bank and make my yard somewhat secured. No one thing fixes it all, and it may be an ongoing issue, but I want something to be done.

In the Geotech report it says come spring or fall, the sandbags need to be removed and replaced with new ones, since they have a tendency to degrade. Or a structure has to be put in to prevent the future erosion. I can walk behind my trailer, but if that river comes up, I have to be secured with a life jacket on, even if I go into my yard

The sandbags need to be done or rip rap – different types of berms, or something to prevent the bank from going in. I had to get my trailer re-leveled after the spring flooding. She is asking me to move one of my gardens, but she tells me not to do anything yet until rip rap comes in. I've asked her when rip rap is coming in. It is showing up early the following week and then nothing happens. She has me move my barbecue, garden, chairs.... because it is coming. She said she is still working on it.

With emergency social services, if I get evacuated again next spring, they only cover your bare essentials. Disaster financial assistance fund only covers 80% of essentials. So, if I lose a patio, porch, any plants, none of that's covered. Only the necessities, if my home gets damaged. I could be losing everything. For evidence, I have a letter from the insurance company. But anything related to the river, where reaches or undercuts the bank, nothing is covered.

The GeoTech report has a couple of different recommendations and some specifically regarding my trailer. The recommendations are that the telecom pole between units 13 and 12 should be assessed or relocated, once flood water recedes. The river bank should be checked over the summer and in the autumn.

Additional sandbagging or more robust structures are needed. It may require permitting from the Ministry of Forest, Lands, [Natural Resource Operations and Rural Development].

These should be addressed as soon as safe to do so.

I have permission from the village of Cache Creek and [the GeoTech company] to use this report in my arbitration hearing. See the letter from the Village, too, that they give me permission.

### Analysis

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

The construction and repair of bank protection works are regulated by various provincial and federal Acts. The Province requires approvals under the *Water Sustainability Act* and Regulation, and, possibly, the *Dike Maintenance Act*, prior to construction. The proposed works must also satisfy the Canada *Fisheries Act*. Other relevant legislation may include the provincial *Land Act*.

The British Columbia *Dike Maintenance Act* states that a “dike” is defined as:

**"dike"** means an embankment, wall, fill, piling, pump, gate, floodbox, pipe, sluice, culvert, canal, ditch, drain or any other thing that is constructed, assembled or installed to prevent the flooding of land;

[emphasis added]

Section 2(2) of the *Dike Maintenance Act* states:

(2) The inspector may

...

(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.**

[emphasis added]

Subsection (4) states:

(4) 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.**

[emphasis added]

Further, section 6 of the *Water Sustainability Act* provides:

**Use of water**

**6 (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.**

[emphasis added]

I note that the *Water Sustainability Act* defines “stream” to include rivers.

After considering these pieces of legislation, I find I do not have the authority under the *Residential Tenancy Act* to order the Landlord to construct a dike or rip rap along the public river. However, the Applicant is at liberty to pursue a remedy against the Respondent in the applicable forum.

Conclusion

I have declined to hear this Application, due to a 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: November 3, 2020

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Residential Tenancy Branch