



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on February 17, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"):

- a monetary order for damage or compensation;

The hearing was scheduled for 1:30PM on July 6, 2021 as a teleconference hearing. The Tenant attended the hearing at the appointed date and time. No one appeared for the Landlord. The conference call line remained open and was monitored for 14 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only persons who had called into this teleconference.

The Tenant testified that he served the Application and documentary evidence package to the Landlord by registered mail on February 25, 2021. The Tenant provided the registered mail receipt in support. Based on the oral and written submissions of the Tenant, and in accordance with sections 82 and 83 of the Act, I find that the Landlord is deemed to have been served with the Application and documentary evidence on March 2, 2021 the fifth day after the registered mailing.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for compensation, pursuant to Section 60 of the *Act*?

### Background and Evidence

The Tenant stated that his tenancy began on February 1, 2020 and that he is currently required to pay pad rent in the amount of \$646.30, which is due to be paid to the Landlord on the first day of each month.

The Tenant stated that near the end of September 2020, the Tenant had concerns regarding a dead tree that was leaning towards his mobile home from the neighbouring pad. The Tenant stated that he has experience in the tree falling industry which led to him to be aware that the tree was at high risk of falling onto his property, likely causing damage.

The Tenant stated that he notified the Landlord on several occasions, however, the Landlord has been nonresponsive. The Tenant stated the tree is planted on his neighbours' pad, which is also owned and managed by the Landlord. The Tenant stated that the tree eventually fell over in early February 2021 which struck the Tenant's fence and shed in the process. The Tenant stated that he contacted a tree removal company to remove the tree from his pad as the Landlord never responded to his concerns.

The Tenant is therefore claiming for the cost of removing the tree from his rental pad. The Tenant has provided a copy of his attempted communications to the Landlord, pictures of the dead tree before and after it fell, along with an invoice in the amount of \$157.50 for tree removal.

The Tenant is also claiming monetary compensation in the amount of \$319.00 for 11 hours, which is the amount of time it took the Tenant to deal with the issues surrounding the fallen tree. The Tenant provided a copy of the time log on which the Tenant recorded the time it took for; repeated attempts to contact the Landlord regarding tree concern, gathering tree removal estimates, calls to the Tenancy Branch for guidance, preparing and submitting the Application, taking part in the hearing, and to collect the decision.

### Analysis

Based on the unchallenged testimony, documentary evidence and on a balance of probabilities, I find;

In relation to the monetary compensation sought by the Tenant, Section 60 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 60 of the

*Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

According to Section 26(1) of the *Act*, a landlord must;

- (a) provide and maintain the manufactured home park in a reasonable state of repair, and
  - (b) comply with housing, health and safety standards required by law.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas.
  - (3) A tenant must repair damage to the manufactured home site or common areas that is caused by the actions or neglect of the tenant or a person permitted in the manufactured home park by the tenant.
  - (4) A tenant is not required to make repairs for reasonable wear and tear.
  - (5) A landlord is not required to maintain or repair improvements made to a manufactured home site by a tenant occupying the site, or the assignee of the tenant, unless the obligation to do so is a term of their tenancy agreement.
  - (6) A landlord's obligations under subsection (1) (b) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

In this case, I find it is the Landlord's responsibility to maintain the rental pads, including arranging for the removal of unsafe trees. I find that the Tenant made sufficient attempts at notifying the Landlord of the potential risk associated with the tree. I find that the Landlord did not take action to safely remove the dead tree before it fell. As such, I find that the Landlord breached Section 26 of the *Act*.

I accept that the Tenant suffered a loss as a result of having the tree removed, therefore, I find that the Tenant is entitled to compensation in the amount of **\$157.50** for tree removal.

The Tenant is also claiming \$319.00 in relation to the time spend dealing with the falling tree. A large portion of the time being claimed relates to the time spent preparing for and submitting the application and take part in the dispute resolution process. I find that these costs are not recoverable under the *Act*. I do however accept that the Tenant was inconvenienced with performing duties that were the Landlord's responsibility. As such, I award the Tenant a nominal monetary award in the amount of **\$50.00**.

Pursuant to Section 60 of the Act, I grant the Tenant monetary compensation in the amount of **\$207.50**. I order that the Tenant deduct \$207.50 from one (1) future rent payment.

### Conclusion

The Landlord has breached Section 26 of the *Act*. The Tenant has established an entitlement to monetary compensation in the amount of **\$207.50**. The Tenant is permitted to deduct this amount from one (1) future rent payment.

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: July 08, 2021

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Residential Tenancy Branch