



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **CNR, RP, FFT**

### Introduction

This hearing dealt with the Tenant's estate representative's application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 39 and 55 of the Act;
2. An Order for the Landlord to make repairs to the unit, site or property pursuant to Section 26 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 65 of the Act.

The hearing was conducted via teleconference. The Tenant's estate representative attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant's estate representative and I were the only ones who had called into this teleconference. The Tenant's estate representative was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant's estate representative that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant's estate representative testified that he was not recording this dispute resolution hearing.

The Tenant's estate representative's mother died on June 29, 2021. On July 22, 2021, the Tenant's estate representative sought permission from the Landlord to rent out the manufactured home. On July 31, 2021, the Landlord replied to the Tenant's estate representative's request as follows:

*As discussed.*

*You may sub-let your mother's home until the estate has been settled or a max of seven months whichever is first.*

*Please note that these tenants are your responsibility.*

*[Tenant's estate representative] this is a courtesy for your mother.*

*Thanks. [Landlord]*

Subsequently, the Tenant's estate representative secured renters in the home.

The Tenant's estate representative testified that the Landlord delivered the 10 Day Notice on November 5, 2021 to his mother's manufactured home. The Tenant's estate representative stated he received a text message from his new tenant that a document was left at the door. He checked his email and the Landlord had also sent the 10 Day Notice to the Tenant's estate representative's email account. The Landlord specified on the 10 Day Notice that the 10 Day Notice was served in person to the tenant or agent of the tenant or an adult (over 19) who appears to live with the tenant and by email to an email address provided as an address for service. The Tenant's estate representative testified that he has not authorized an email address to be used by the Landlord for service of documents.

Section 81 of the Act states that all documents, other than those referred to in Section 82 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 64 (1) [director's orders: delivery and service of documents];
- (j) by any other means of service provided for in the regulations.

As the Landlord did not serve the 10 Day Notice on the Tenant's estate representative by one of the required methods, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure that parties know the case being made against them, are given the opportunity to reply, and have the right to have their case heard by an impartial decision-maker: *AZ Plumbing and Gas Inc. (Re)*, 2014 CanLII 149849 (BC EST) at para. 27. Procedural fairness requirements in administrative law are functional, and not technical, in nature. They are also not concerned with the merits or outcome of the decision. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 at para. 65. I find that the Landlord did not properly serve the Tenant's estate representative with the 10 Day Notice and I dismiss it.

The Tenant's estate representative stated that the Landlord served his evidence in response to the Tenant's estate representative's application via registered mail on January 5, 2022. The Tenant's estate representative confirmed he received the Landlord's evidence. The Landlord's evidence package contained the Canada Post registered mail receipt with the tracking number submitted into documentary evidence. I have noted the registered mail tracking number on the cover sheet of this decision. Rules of Procedure 7.4 says that evidence must be presented by the party who submitted it, or by the party's agent. The Landlord did not attend the hearing to present his evidence, so any written submissions supplied may or may not be considered. I find that the Landlord's evidence was served pursuant to Section 81(c) of the Act.

The Tenant's estate representative confirmed that he served the Landlord with the Notice of Dispute Resolution Proceeding for this hearing via registered mail on November 15, 2021 (the "NoDRP package"). The Tenant's estate representative also confirmed service of his evidence package on the Landlord which was sent via

registered mail on January 1, 2022. The Tenant's estate representative referred me to the Canada Post registered mail receipts with tracking numbers submitted into documentary evidence as proof of service. I have noted the registered mail tracking numbers on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package and evidence for this hearing five days after mailing them, on November 20, 2021 and January 6, 2022 respectively, in accordance with Sections 81(c), 82(1)(c) and 83(a) of the Act.

### Preliminary Matter

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. The Tenant's estate representative is the son of the original Tenant for this manufactured home pad. The estate representative's mother died on June 29, 2021 and he is his mother's estate personal representative. In the hearing, I asked the Tenant's estate representative for permission to amend his name in this application so that it conforms with Residential Tenancy Policy Guideline #43 – Naming Parties, Section D. Naming an Estate of a Person Who Has Died. The Tenant's estate representative agreed, and the correct tenant name is noted in the style of cause of this decision.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. Changing the name of the Tenant's estate representative in this application poses no prejudice on the Landlord. On this basis, I changed the Tenant's estate representative's name, and it is reflected in this decision.

### Issues to be Decided

1. Is the Tenant's estate representative entitled to an Order for the Landlord to make repairs to the unit, site or property?
2. Is the Tenant's estate representative entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant's estate representative testified that the periodic tenancy agreement for the rental pad began on December 30, 2007. Monthly rent is \$295.00 payable on the first day of each month. The Tenant's estate representative has continued to pay the pad rental since his mother's death.

The Tenant's estate representative sent an email to the Landlord on July 22, 2021 and requested that the Landlord repair a broken lamp post that is located in front of unit #[XX] and accesses the back of the Tenant's estate representative's manufactured home. He states the lamp is a safety, security and aesthetic concern. He also said that on July 9, 2021, the license plates from his mother's car were stolen, and the back door of her house was kicked in. Both of these incidents were reported to the police, but having a well lit area would deter from these kinds of criminal activities occurring.

The Tenant's estate representative asserts that the current tenancy agreement states what is included in the rent: Water, Snow Removal (park roads only), Sewage Disposal, On Site Parking for a maximum of 2 vehicles, Recycling pickup, Garbage pickup, and Street Lighting. The Tenant's estate representative testified that his mother complained about the lack of care from the Landlord in maintaining the manufactured home park. The Tenant's estate representative wants the lamp post repaired and the light operational once again.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based. As this hearing was conducted pursuant to Rules of Procedure 7.3, in the Landlord's absence, all the Tenant's estate representative's testimony is undisputed.

Section 26 of the Act is the relevant part of the legislation in this matter. It states:

### ***Landlord and tenant obligations to repair and maintain***

26 (1) *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.*

...

- (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.*

Residential Tenancy Policy Guideline #1. Landlord & Tenant – Responsibility for Residential Premises assists in understanding the policy intent of the legislation. The guideline clarifies the responsibilities of landlords and tenants regarding maintenance, cleaning, and repairs of manufactured home parks, and obligations with respect to services and facilities. The guideline reads in part:

*The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain “reasonable health, cleanliness and sanitary standards” throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).*

...

#### **PROPERTY MAINTENANCE**

...

- 6. *The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.*

The Tenant’s estate representative requested that a repair was needed to a broken lamp post that is on the grounds of the manufactured home park as early as July 22,

2021. The Landlord has not repaired it as of the date of this hearing. The Tenant's estate representative points out that street lighting is an included service in the tenancy agreement. The Tenant's estate representative is also not responsible for reasonable wear and tear to the manufactured home park site in accordance with Residential Tenancy Policy Guideline #1. I find the Tenant's estate representative is entitled to this repair, and I Order it to be done.

I Order the Landlord to repair the broken lamp post and ensure the light is operational by February 25, 2022. Should the Landlord fail to comply with this Order, the Tenant's estate representative is at liberty to apply for dispute resolution and request financial compensation for his losses. I make no finding on the merits of any future possible application.

I dismissed the Landlord's 10 Day Notice due to improper service. As the Tenant is successful in his claim, he is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 65(2) of the Act, withhold \$100.00 from one month's rent due to the Landlord.

### Conclusion

The Landlord is Ordered to repair the broken lamp post and ensure the light is operational by February 25, 2022.

The Tenant's estate representative may withhold \$100.00 from one month's rent due to the Landlord to recover his application filing fee.

The Landlord's 10 Day Notice is cancelled due to improper service.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 26, 2022

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Residential Tenancy Branch