



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OLC, MNDCT, OT**

### Introduction

This hearing, reconvened from an earlier hearing on December 7, 2021, dealt with the tenant's application pursuant to the Manufactured Home Park Tenancy Act (the "Act") seeking:

- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 55;
- A monetary award pursuant to section 60; and
- Other relief.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was represented by counsel.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 81 and 82 of the *Act*.

At the outset of the hearing, the tenant testified that they had erroneously indicated this application is being made under the Residential Tenancy Act on the initial application for dispute resolution. Pursuant to my power to amend an application under section 57(3) of the *Act*, I amend the landlord's application for dispute resolution to make this application under the appropriate *Act*.

Issue(s) to be Decided

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to a monetary award as claimed?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

Based on the documentary evidence, this month-to-month tenancy began in 2018. The landlord made various contradictory submissions stating alternately that the property is not a manufactured home site and there is no tenancy, that the tenant is obligated to pay monthly rent for their residence on the property, and that the tenant has failed to pay rent as required.

There was an earlier hearing regarding this tenancy under the file number on the first page of this decision where the presiding arbitrator found that the landlord imposed a rent increase in contravention of the *Act* and regulations and the monthly rent was set at \$300.00.

The parties agree that the tenant has reduced their monthly rent in accordance with the Monetary Order awarded in the previous hearing. The parties also agree that after the Monetary Order was satisfied the tenant attempted to make rent payments in the amount of \$300.00 each month, as per the decision, but the landlord has refused to accept all subsequent payments.

The landlord gave lengthy testimony about their personal dislike of the tenant and their ongoing conflicts which have spanned actions before the Provincial and Supreme Courts of British Columbia, Civil Resolutions Tribunal and police incidents. The landlord testified that they have, on numerous occasions, accessed the rental site without notice or permission stating that it is their right to do so as the owner of the property. The tenant submitted into evidence a journal of incidents supporting the landlord's testimony that there have been numerous incidents of unauthorized access.

The landlord alternately testified that they have interfered with the tenant's vehicles and personal items stored on the property and that they have not touched them but have been photographing and checking their registration status. The tenant submits that the landlord has stolen, damaged or tampered with the locks and gates to the property, the tenant's vehicles and has threatened to have the personal items removed. The landlord disputed that they have damaged any of the tenant's possessions but also testified that the items should not be present on the property, and they intend to have them forcibly removed.

The tenant said the landlord has attempted to set the vehicles parked on the property on fire to which the landlord testified "Yes, I tried to set your place on fire". The landlord subsequently said that their statement agreeing that they have attempted arson was made facetiously.

The landlord testified about the ongoing adversarial relationship with the tenant, making remarks about their character and detailing incidents of threats uttered and hostile interactions. The landlord repeated throughout the hearing their belief that the tenant is obligated to pay rent and that there is a significant rental arrear, while simultaneously testifying that they have refused to accept the payments from the tenant and that they intend to issue and enforce a Notice to End Tenancy for Unpaid Rent.

The tenant now seeks an order that the landlord comply with the Act, regulations and tenancy agreement by accepting the rent cheques paid by the tenant for monthly rent and be barred from entering the rental property without notice or permission. The tenant submits that the approximate cost of the damage to the tenant's locks, gates and personal items is \$1,000.00 and seeks a monetary award in that amount. The tenant also suggests a monetary award of \$250.00 for each incident of trespass onto the rental unit.

### Analysis

The landlord claims, at certain points in their submissions, that there is no tenancy and this matter falls outside of the jurisdiction of the Act and the Branch. I find the landlord's submission to be directly contradicted by their own position that the tenant is obligated to pay monthly rent and that any manufactured homes used by the tenant are the property of the tenant and not rented to them by the landlord.

The landlord's belief that this matter falls outside of the *Act* appears to originate in the fact that the property has not been subdivided into multiple parcels and the landlord is not operating a commercial manufactured home park. I find the landlord's reasoning to be specious and not at all persuasive.

Section 1 of the Act provides the following definitions:

**"manufactured home park"** means the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located;

**"manufactured home site"** means a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home;

**"tenancy"** means a tenant's right to possession of a manufactured home site under a tenancy agreement;

**"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities;

Based on the undisputed testimony of the landlord it is clear that the rental property is a parcel of land which the tenant has rented. The landlord's repeated insistence that the tenant is obligated to pay monthly rent for the use of the site, as well as their various complaints about breaches of other rules clearly indicates that the landlord believes there is an agreement between the parties for use of the site.

I find that the relationship between the parties is an enforceable tenancy agreement and the matter is within the jurisdiction of the *Act* and the Branch.

Pursuant to Residential Tenancy Rule of Procedure 6.6 the applicant bears the onus to prove their claim on a balance of probabilities.

In the present case, the respondent landlord gave lengthy testimony which clearly establishes the majority of the tenant's claim on a balance of probabilities. The landlord's testimony detailed their past conduct in violation of the *Act* and regulations,

and their intention to take action in the future in disregard of the *Act*, regulations and tenancy agreement.

I am satisfied with the landlord's testimony that, despite complaining about a rental arrear, the landlord has repeatedly and continually refused to accept payment of the monthly rent from the tenant.

I further accept that there have been numerous incidents where the landlord has accessed the rental property without proper notice or permission. I am satisfied with the testimony of the landlord that they believe they have the authority to access the property to preserve its safety and will continue to do so without notice to the tenant. I further note that these incidents have been recorded by the tenant in their journal and by all accounts these incidents are notable as in many cases they ignite into hostile interactions between the parties.

Under the circumstances I find it appropriate to order that the landlord accept payments issued by the tenant towards rent under the tenancy agreement. I find that any further refusal on the part of the landlord to accept the rent payments may be construed to be a waiver of their right to the rent for that month and may not give rise to the basis for an issuance of a notice to end tenancy for non-payment of rent.

I further order that the landlord comply with section 23 of the *Act* prohibiting entry to a site that is subject to the tenancy agreement. I note that any future violations of the tenant's right to exclusive possession by the landlord may give rise to a monetary award in the tenant's favour and may form the basis for a referral to the Compliance and Enforcement Division of the Residential Tenancy Branch.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I am satisfied that the landlord has damaged, removed or tampered with the tenant's possessions including locks, gates and vehicles on the property. While the landlord, at

certain points in their testimony, disputes that they have caused damage, they also stated that they have accessed the property and have removed items and fixtures they believed were placed by the tenant. I find the testimony of the parties, supported in the photographs and video evidence to be sufficient to establish that the landlord has caused damage to the tenant's items in contravention of the *Act*.

While the tenant did not provide receipts and invoices for the cost of the items they claim were damaged, they gave cogent testimony regarding their approximate cost and I am satisfied that the total amount of the damages incurred is \$1,000.00 as claimed. Accordingly, I issue a monetary award in that amount in the tenant's favour.

Section 22 of the *Act* speaks to a tenant's right to quiet enjoyment, and provides as follows:

**22** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the manufactured home site subject only to the landlord's right to enter the rental unit in accordance with section 22 [*landlord's right to enter manufactured home site restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means a substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or

unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In the present circumstance, based on the evidence of the parties and the testimony of the landlord I am satisfied that there has been frequent, ongoing and unreasonable disturbance of the tenant on the part of the landlord. I find that the landlord's interference with the tenant's right to quiet enjoyment through their hostile interactions, uninvited presence on the property, and interference with the tenant's possessions spans many months. The tenant's written submissions contain details of incidents which appear to escalate from May 2021 onwards. The parties gave detailed evidence of the antagonistic interactions.

The tenant has placed security cameras about the property to record the incidents of trespass and interference by the landlord as well as maintaining a hand-written journal of some of the more egregious incidents.

While the landlord claims that the tenant is the one who has initiated the hostile actions and aggressive behaviour, I find no documentary evidence to support the landlord's version of events. I accept that some of the statements made by the landlord during the hearing including their admission that they have attempted to start fires on the property, are facetious comments or exaggerations. Nevertheless, I find there is consistency in the underlying submission of both parties showing the landlord has repeatedly and frequently attended the rental property and has engaged in behaviour that would reasonably be characterized as interference and disturbance.

Based on the foregoing I find that a monetary award in the amount of \$1,650.00, a figure that is the equivalent of one half of the monthly rent of \$300.00 for the 11-month period from May 2021 to the date of the hearing to be appropriate. I issue a monetary award in that amount in the tenant's favour.

### Conclusion

I find that there is a valid and enforceable tenancy agreement between the parties.

The landlord is ordered to comply with the *Act*, regulations and tenancy agreement, specifically in regards to the restrictions on the right of a landlord to enter the rental site pursuant to section 23 and the rules on payment of rent pursuant to section 20. Should the landlord continue to refuse to accept delivery of monthly rent payment the landlord will be deemed to have waived their right to payment for that month.

I note that further breaches of the *Act*, regulations or tenancy agreement on the part of the landlord may give rise to the basis for a monetary claim by the tenant and/or a referral to the Compliance and Enforcement Division of the Residential Tenancy Branch.

I issue a monetary order in the tenant's favour in the amount of \$2,650.00. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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

Dated: March 21, 2022

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Residential Tenancy Branch