



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes OLC, MNDCT

This hearing dealt with two Applications for Dispute Resolution filed by the tenant, as amended. The tenant seeks orders for the landlord to comply with the Act, regulations or tenancy agreement; and, monetary compensation for damages or loss under the Act, regulations or tenancy agreement.

Both parties appeared and/or were represented at the hearing, which was held over three dates. The parties were affirmed and informed they were not permitted to make an unofficial audio recording of the proceeding.

Two Interim Decisions were issued for this proceeding those Interim Decisions should be read in conjunction with this final decision.

As seen in the second Interim Decision, I had authorized and ordered the parties to provide evidence concerning ownership of land adjacent to the tenant's manufactured home site where several large trees are located ("the subject lands"). I expressly prohibited the submission and any other materials.

During the period of adjournment, the tenant submitted several documents, including those that did not pertain to establishing ownership of the subject lands. The materials that did not pertain to establishing ownership of the subject land were excluded.

### **Issue(s) to be Determined**

1. Is the landlord responsible for maintaining land adjacent to the tenant's manufactured home site where several large trees are located?
2. Is the landlord responsible for removing weeds and tree debris that falls from the trees on the adjacent land and lands on the tenant's manufactured home site?
3. Is it necessary to issue orders for compliance against the landlord with respect to construction activities taking place at another rental site in the manufactured home park?

4. Is the tenant entitled to compensation from the landlord with respect to the tenant's maintenance of her manufactured home site and loss of quiet enjoyment with respect to the construction activity at a nearby rental site?

### Background and Evidence

The tenancy started on August 15, 2015 on a month to month basis. The tenant is required to pay rent of \$531.00 on the 15<sup>th</sup> day of every month.

By way of the two Application for Dispute Resolution before me, the tenant raises two primary issues: property maintenance and loss of quiet enjoyment.

### ***Property maintenance***

The parties were in dispute as to ownership of land adjacent to the tenant's manufactured home site where several large trees have grown ("the subject lands"). After the second adjournment, the tenant confirmed with the city that the landlord does not own the subject lands but that the city still owns it. The city informed the tenant that the city and the landlord are in the process of transferring the subject lands to the landlord, which was confirmed by the landlord, but that the process has not completed and the landlord does not yet hold legal title to the subject lands.

The tenant argued that some of the manufactured homes in the park encroach on the subject lands, and the landlord collects rent for those manufactured homes, so the landlord ought to be held responsible for maintaining the trees and tree debris on the subject lands. The landlord stated that he had done some maintenance on the subject lands as a courtesy but that he is not required to do so.

The tenant argued that the city has a "good neighbour" by-law that also requires the landlord to maintain the subject lands.

I informed the parties that I do not have jurisdiction over land that falls outside of the manufactured home park. It is up to the city to enforce its by-laws and any encroachment of manufactured homes on the subject lands is a matter between the city and the landlord. Therefore, I informed the tenant that I would not further consider issuing an order to the landlord to maintain the city's land and that her recourse is to contact the city if she has concerns over maintenance of the city lands.

The tenant requested that I order the landlord to remove tree debris that falls onto her site from the trees on the city land and weeds that have grown on her site that came

from weeds on the city land. The tenant also seeks compensation from the landlord for the time and expenses she has incurred to remove tree debris and weeds from her site.

The landlord submitted that a truck is parked in the manufactured home park, usually between April and October for tenants to load with their yard debris and the landlord hauls it away. The tenant stated that she cannot load the truck with the tree debris as it is too high and she has disabilities. The landlord's agent stated that tenants who cannot reach into the truck may place the debris beside the truck and the landlord or his employee will load the truck. In recognition that the tenant's site is a far distance from where the truck is usually parked and the tenant receives a fair amount of tree debris in her yard, the landlord indicated he is willing to come pick up the pile of her yard debris the tenant piles at the edge of her site. The tenant was agreeable to this resolution but questioned what she is to do with leaves that fall on her site after the truck is removed in October.

The landlord suggested the tenant may take leaves to the city composting facility. The tenant stated she did that once and it was a lot of work and she has a car that she does not want to fill with leaves. I informed parties that I would make a decision as to who is responsible for removing the leaves from the tenant's site.

### ***Loss of quiet enjoyment***

The other matter raised by the tenant pertained to loss of quiet enjoyment that resulted from construction activity at a rental site located four sites from the tenant's rental site.

The tenant requested orders for compliance for "quiet enjoyment" without further particulars on the Application for Dispute Resolution; however, in the section that deals with monetary compensation, the tenant described the loss of quiet enjoyment as relating to the construction activity. Both parties provided consistent statements that the construction activity has been completed as of the date of the hearing. As such, I do not further consider issue an order for compliance.

The tenant requested compensation of \$786.00 which is the equivalent to 50% of her monthly rent for the period of April 6, 2021 – June 23, 2021. This is the construction period the tenant identified on her Application for Dispute Resolution

The tenant testified that the tenant in the nearby site brought in heavy machinery to rip up the yard and pave it. He also completely renovated the manufactured home and built a carport and shed.

On the tenant's Application for Dispute Resolution, the tenant described construction activity taking place between 8:00 a.m. and 9:00 p.m. The tenant testified that all the construction activity was very loud and took place nearly every day, all day long, and into the evening, including on Sundays.

Aside from the loudness, the tenant stated that the park's road was impeded so that emergency vehicles would not be able to get down the road if they needed to. The tenant confirmed that her access was not impeded by the machinery. The tenant acknowledged that she is unaware of any emergency vehicles actually being impeded by the machinery.

The tenant put forth images of the machinery and the renovated manufactured home, along with a copy of a letter dated June 15, 2021 that was written to the landlord to complain of the construction activity and the landlord's written response dated June 29, 2021.

In the landlord's written response of June 29, 2021 the landlord's agent describes the by-law officer being satisfied that noise by-laws were not broken, that renovations are beneficial, and that temporary inconvenience and disturbances do not amount to a breach of quiet enjoyment.

The landlord's agent testified that the machinery did not block emergency vehicles and that the photograph provided by the tenant was taken when machinery was being moved, as seen by the driver in the machine, and was not parked in the road. The landlord pointed out that there is also second roadway that provides access to the sites in the park.

The landlord provided dates of renovation as being April 8, 2021 to May 31, 2021 and the heavy machinery was operating between June 10 – 21, 2021. The landlord put forth statements of the person who was renovating the manufactured home, invoices for machine work and several letters written by other tenants who were in support of the renovation.

The tenant also provided a copy of a letter the landlord wrote to the tenant informing the tenant that they received a complaint that the tenant was threatening the tenant who was performing the renovation and to cease such behaviour or face eviction. The landlord provided a copy of the complaint letter written by the other tenant and submitted that the letter issued to the tenant was to put the tenant on notice as to the complaint they received. The tenant stated the complaint letter written against her was "all lies" and defamatory. The tenant attempted to refute the complainant's statements

with a view to proving the statements of the complainant were untrue and defamatory; however, I did not permit the tenant to do so as this Application for Dispute Resolution is against the landlord and the landlord was responding to a complaint they received. My jurisdiction to resolve disputes does not extend to claims of defamation between individuals who do not have a landlord/tenant relationship. A claim of defamation against the complainant tenant would have to be resolved in the appropriate forum.

### Analysis

As the applicant, the tenant bears the burden to prove entitlement to the remedies she seeks against the landlord.

Upon consideration of everything before me, I provide the following findings and reasons.

### ***Property maintenance***

As for maintenance of the land adjacent to the tenant's site where several large trees are located, I have been provided evidence by both parties that the subject land is currently owned by the city. I do not have jurisdiction over land that is outside of the manufactured home park. Issues that involve the city's land would have to be raised with the city.

As for the removal of weeds and tree debris that falls into the tenant's manufactured home site, I see that the tenancy agreement provided by the tenant as evidence includes "park rules and regulations" including a term for maintenance, as set out below:

#### **B. Maintenance of Lot and Home**

- 1. Tenant must maintain his or her Lot and Home, its facilities and equipment, in good repair and in a safe, neat, clean and sanitary condition. They must not store bottles, cans, boxes or equipment under or around the trailer. All lots are to be kept weed free with lawns neatly cut, raked and trimmed at all times. The tenant is responsible for maintaining and trimming their own trees in a neat and safe manner and hereby agree not to allow trees located on their lot to exceed 20 feet in height measured from the ground. Tenant must remove and dispose of their own debris, grass, branches, refuse, etc to approved municipal disposal sites. Tenant will be fined \$50.00 per week for breach of this rule after receiving written notice to comply.**

I find the above term clearly sets out that the site is to be maintained by the tenant so that it is kept weed free and raked. The term also sets out that the tenant is responsible for removing and disposing of their own yard debris, including taking it to the municipal disposal site.

I find the above term is consistent with Residential Tenancy Policy Guideline 1 which provides the following, in part, with respect to property maintenance:

3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

Based on the above term in the park rules and policy guideline 1, I find it is clear that the tenant is responsible for maintaining her site and that includes removal of weeds, leaves and other tree debris that falls or blows onto her site.

As for the landlord's provision of a truck for tenants to use to place yard debris, I find that is a courtesy the landlord provides its tenants as there is no such requirement in the tenancy agreement. Accordingly, when the truck is unavailable it remains the tenant's responsibility to remove the weeds, leaves and other tree debris that lands on her site by taking it to the appropriate facility. Should the tenant not be able or willing to place the debris in her own vehicle, the tenant remains at liberty to seek or hire assistance, at her expense.

In keeping with the landlord's willingness to pick up the tenant's yard debris from the edge of the tenant's site when the dump truck is on the site, I strongly suggest the landlord perform this task with a view to improving this tenant relationship. However, I do not make this an order of mine as it exceeds what is required under the Act, regulations or tenancy agreement.

The tenant also requested monetary compensation from the landlord for having to deal with weeds and debris on her site.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 60 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The tenant's basis for her monetary claim was that the landlord is responsible for the growth of weeds on the land adjacent to the tenant's site and responsible for maintaining the trees on the adjacent land. However, as I previously found, the land adjacent to the tenant's site is city land and the Act, regulations and tenancy agreement do not apply to land outside of the manufactured home park. Since the land where the weeds originated and the trees are located are on city land, and the tenancy agreement requires the tenant to maintain her site, I can not find that the landlord is in breach of the Act, regulations or tenancy agreement. Where a party cannot establish the other party is in breach of the Act, regulations or tenancy agreement, there is no basis to award compensation. Therefore, I find there is no basis to hold the landlord liable to compensate the tenant for maintaining her own site and I dismiss the tenant's claim for compensation for property maintenance.

### ***Loss of quiet enjoyment***

As for the construction activity at a nearby site, having heard the construction activity has already ended, I make no order for compliance.

As for the tenant's monetary claim for loss of quiet enjoyment related to the construction activity at the nearby site, I find the tenant's claim fails, for reasons set out below.

Under section 22 of the Act, a tenant is entitled to quiet enjoyment. Quiet enjoyment includes freedom from unreasonable disturbance and use of common areas free from significant interference. It is important to note that the Act includes the words "unreasonable" and "significant" and each word must be given meaning under the principle of statute interpretation. I find that the inclusion of the words "unreasonable" and "significant" requires considerably more than an ordinary or reasonable disturbance or any interference to find a breach of quiet enjoyment.

Policy Guideline 6 provides information and policy statements with respect to quiet enjoyment, including the following excerpt:

## **B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**

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 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 entitlement to 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 determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

[My emphasis underlined]

Where one resides in an older manufactured home park, such as this one, I find it reasonable to expect that from time to time manufactured homes in the park will be renovated and the sites on which they are located may be re-landscaped. While the construction activity may be loud and annoying to nearby residents, the disturbance to one tenant must be balanced against to the right of the other tenant to renovate their home and/or site. Accordingly, in my view, where the disturbance is within reason or temporary when the type of activity is taken into consideration, then there is not a basis to find a breach of quiet enjoyment by the landlord.

In this case, the landlord provided very specific dates as to when the manufactured home was being renovated and when heavy machinery was working on the site. The dates were supported by a statement of the tenant who renovated the manufactured home and invoices for the landscaping. The landlord also provided photographs of the subject manufactured home and site, along with letters of other tenants who were in



support of a major renovation as the final product was desirable. Upon review of this evidence, I accept that a major renovation took place of the nearby home and site and I am of the view that approximately 7 weeks for the major renovation of a manufactured home and 11 days for re-landscaping to be within reason.

It was also undisputed that a by-law officer was called with respect to the construction activity and there is no evidence before me that the city noise by-laws were broken.

The tenant argued that the park rules provide for quiet hours and the construction activity took place outside of the quiet hours, and on Sundays.

The tenancy agreement includes the following park rule concerning noise:

**8. No Television, radio, stereo or other noise will be permitted between 11:00pm and 9:00am and no unusually disturbing noise will be permitted at any time. The determination of what constitutes "unusually disturbing" shall be made by Landlord; whose decision is final.**

I note that the park rule 8. reproduced above does not prohibit noise on Sundays. Accordingly, the quiet hours would apply to every day of the week.

In filing her Application for Dispute Resolution, the tenant submitted that the construction activity took place between 8 a.m. and 9:00 p.m. Since quiet hours start at 11:00 p.m., it appears the activity ceased well before the 11:00 p.m. deadline. As for the time construction activity started, I was provided conflicting evidence. The person renovating the manufactured home provided a written statement indicating construction started at 9:00 a.m. I reviewed the tenant's evidence in an effort to find evidence that supports the tenant's position the construction activity started at 8:00 a.m. and I cannot find any. When I look at the written complaint the tenant wrote to the landlord the tenant does not mention the start time for the construction activity and she does not appear to raise any issue with respect to the start time. Rather, in the tenant's written complaint to the landlord the tenant takes issue with respect to the time the activity ends, the construction taking too long and taking place on Sundays. Therefore, I find there is insufficient evidence to demonstrate the construction activity commenced prior to 9:00 a.m. and I am not satisfied that park rule 8. was violated.

The tenant argued that machinery in the roadway would have impeded emergency vehicles; however, the landlord refuted that position by pointing out the tenant took the

photograph of the machinery in the road when it was in the process of being moved and a driver was in the machine. Also, the landlord pointed out there is a second road in the park that could be used. The tenant's own testimony was that she was not impeded by the machinery in the roadway and the tenant did not present evidence to show emergency vehicles were actually impeded.

In light of all of the above considerations, I accept the tenant was disturbed by the construction activity but I am unsatisfied it violated the tenancy agreement or that it was unreasonable disturbance or significant interference in relation to a renovation of a nearby manufactured home and site. Therefore, I find the tenant has not established a breach of quiet enjoyment by the landlord and I make no award for compensation to the tenant.

### Conclusion

I have declined to issue any orders for compliance against the landlord to maintain land which falls outside of the manufactured home park as I do not have jurisdiction to do so. I have found that the tenant is responsible for removing weeds and tree debris from her site and I have made no orders for compliance to the landlord; however, I encourage the landlord to pick up yard debris piles the tenant places at the edge of her site when the landlord's truck is on the property to foster an improved tenancy relationship and in recognition of the quantity of tree debris that falls onto the manufactured home site and the distance from the tenant's site to the location where the truck is ordinarily parked.

The tenant has not established an entitlement to compensation from the landlord for property maintenance or loss of quiet enjoyment and her claims are dismissed, without leave to reapply.

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 7, 2022

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Residential Tenancy Branch