



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenants: CNR-MT, MNRT, MNDCT, RR, AAT, LRE, OLC, FFT
Landlord: OPU-DR, MNU-DR, FFL

Introduction

This hearing dealt with the Tenants' application under the *Manufactured Home Park Tenancy Act* (Act) for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities (10 Day Notice) under sections 39 and 48 of the Act;
2. More time to dispute the notice under section 59 of the Act;
3. A monetary order for the cost of emergency repairs to the manufactured home site under sections 33 and 67 of the Act;
4. A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 60 of the Act;
5. An order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 21 and 58 of the Act;
6. An order to allow access to or from the manufactured home site or park for the Tenant or the Tenant's guests under sections 24 and 55 of the Act;
7. An Order to suspend or set conditions on the Landlord's right to enter the rental unit under section 63 of the Act;
8. An order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 55 of the Act; and,
9. authorization to recover the application filing fee from the Landlord under section 65 of the Act.

This hearing also dealt with the Landlord's cross application under the Act for:

1. An Order of Possession for a 10 Day Notice under sections 39, and 48 of the Act;

2. A Monetary Order to recover money for Unpaid Rent and/or Utilities under section 60 of the Act; and,
3. Authorization to recover the application filing fee from the Tenants under section 65 of the Act.

Tenant D.E. and advocate M.G. attended the hearing for the Tenants.

Landlord G.W. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Landlord G.W. was deemed served with the Tenants' Proceeding Package on March 25, 2024, by registered mail in accordance with sections 82(1)(c) and 83(a) of the Act, the fifth day after the registered mailing. The Tenants uploaded the copy of the Canada Post customer receipt attesting to this service. The Landlord confirmed receipt.

I find that the Tenants were deemed served with the Landlord's Proceeding Package on March 26, 2024, by registered mail in accordance with sections 82(1)(c) and 83(a) of the Act, the fifth day after the registered mailing. The Tenant confirmed receipt.

Service of Evidence

Based on the submissions before me, I find that the Tenants' evidence was served to the Landlord in accordance with section 88 of the Act.

The Tenants submitted that they personally served their evidence on the Landlord on April 10, 2024. The Tenants uploaded a signed statement by their witness attesting to this service. The Landlord testified that he did not believe that he received all the Tenants' evidence. The Landlord said he did not receive a notice for the advocate at the hearing.

Rules 6.7 and 6.8 of the Residential Tenancy Branch (RTB) Rules of Procedure state:

6.7 Party may be represented or assisted

A party to a dispute resolution hearing may be represented by an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make their presentation.

6.8 Proof of authority to act

If an agent attends on behalf of the party, the agent should be prepared to provide proof of their authority to represent a party.

Tenant D.E.'s advocate did not attend on their behalf, as Tenant D.E. was in attendance at the hearing. I find according to Rule 6.7 that Tenant D.E. is permitted to be assisted by their advocate and the Landlord does not require any further notice about their attendance. Based on the submissions before me, I find that the Tenants' evidence was served to the Landlord in accordance with section 88 of the Act.

Preliminary Matters

Unrelated Claims

The Tenants vacated the rental unit on March 30, 2024. Rule 6.2 sets out what will be considered at a dispute resolution hearing. As the Tenants are no longer residing in the rental unit, I dismiss all of the Tenants claims related to the possession of the unit without leave to re-apply. The Tenants' monetary claims, request for an Order for the Landlord to comply with the Act, Regulation, and tenancy agreement, and the claim for recovery of the application filing fee will be considered in this decision.

The Tenants submitted that the Landlord agreed there is no outstanding rent because the repairs made in the driveway covered this amount.

The Landlord testified that he would not be pursuing the unpaid rent or utilities if the Tenants vacated. As the Tenants have vacated, and based on the submissions of the Tenants, I find the Landlord's 10 Day Notice is withdrawn.

The Landlord questioned whether he needed an Order of Possession as the Tenants' home still remains on his land. The Landlord served a 12 Month Notice on the Tenants in September 2023. The Landlord testified in the first hearing that his addendum was poorly worded on his part, and his intention was that it may take up to six months to remove the Tenants' structures from the Landlord's property, but during this period, the Tenants are not required to pay rent to the Landlord. If on the effective date of the 12 Month Notice, the home remains on his land, the Landlord will have the option to seek an Order of Possession for the undisputed notice to end.

Issues to be Decided

1. Are the Tenants entitled to a monetary order for the cost of emergency repairs to the manufactured home site?
2. Are the Tenants entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement?
3. Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?
4. Are the Tenants entitled to authorization to recover the application filing fee?

Background and Evidence

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

The parties confirmed that this tenancy began as a fixed term tenancy on August 18, 2018. Additional fixed term tenancies were entered into, the last one to begin on September 1, 2023, and to end on September 1, 2024. The Tenants vacated on March 30, 2024. Monthly rent was \$350.00 payable on the first day of each month.

This hearing was reconvened after it was adjourned on April 26, 2024. This decision should be read in conjunction with the Interim Decision issued on April 26, 2024.

The Landlord said his property is not a mobile home park. The lot the Tenants' home was placed is the Landlord's private lot. But the Landlord stated that under the Act it applies because the home and structures belonged to the Tenants.

The Tenants claim compensation for a rebuild of a septic system they originally built in 2018. The Tenants' advocate stated that the Tenants' previous septic system failed in 2022 and they undertook to install a new septic system because they said they had a verbal agreement with the Landlord that there was going to be a 10-year lease signed. The Tenants' advocate stated that the Landlord made it clear that he was not going to do the repairs.

A year after the project was done, the Landlord served a 12 Month Notice to End Tenancy For Conversion of Manufactured Home Park (12 Month Notice) on the Tenants on September 19, 2023. The effective date of the 12 Month Notice is September 30, 2024.

Tenant D.E. stated that the Landlord recommended how she was to install the septic tank and field. Tenant D.E. said she did not agree with the Landlord's instructions but continued to work under their instruction. The Tenants' monetary order worksheet lists the following items:

Item	For	Amount
Little Digger rentals	10 days machine rental	\$2,675.00
Andrew Sheret Ltd.	4 pcs 10' solid sewer pipe	\$155.46
[Tenant D.E.]	120 hr machine op.	\$12,000.00
[Tenant D.E.]	110 hr ground labor	\$11,000.00
[Tenant D.E.]	rent Patrick loader-lift tank	\$200.00
[Tenant D.E.] child Z.	210 hr childcare @ \$10/hr	\$2,100.00
[Tenant D.E.] child R.	210 hr childcare @ \$10/hr	\$2,100.00
[Tenant D.E.]	70' perf drain pipe @ \$3.47	\$272.05
[town] Sand and Gravel	3 loads 1" clean drain rock	\$1,050.00

The Tenants' advocate states that under section 26 of the Act, it is the Landlord's responsibility to provide and maintain the manufactured home park in a reasonable state of repair, and must comply with housing, health and safety standards required by law. The Tenants rely on the regional district manufactured home community bylaw that has jurisdiction for the residential property. It states:

Required Services and Facilities

413. *The following services and facilities shall be required within a manufactured home community:*

...

(3) *a community sewer system*

...

Sewage and Waste Water Disposal System

634. *The owner of a manufactured home community shall provide for the disposal of all waste water and of all body wastes that are generated within the manufactured home community by causing all sewage and wastewater to be discharged into a community sewer system in compliance with the Health Act and the Waste Management Act, and where applicable in accordance with either:*

- (1) *the Water Act or the Municipal Act when an Improvement District has an applicable bylaw pursuant to the Water Act; or*
- (2) *the Municipal Act, when a Regional District has an applicable bylaw setting out the terms and conditions of any extension of its community sewer system.*

...

636. *The sewage and waste water disposal system shall be constructed according to the approved design and certified by a Professional Engineer. Construction, installation, and certification shall be at the owner's expense.*

...

Drainage

...

647. *The owner of a manufactured home community shall provide a drainage collection and disposal system designed and construction approved dbv [sic] a Professional Engineer which:*

- (1) *may consist of a surface drainage and/or underground piped system;*

The Tenants uploaded invoices from Little Digger Rentals for some equipment rental dated for May 28, 2022 that totaled \$1,125.00; for July 1, 2022 that totaled \$550.00; for July 15, 2022 that totaled \$550.00; for September 12, 2022 that totaled \$300.00; and, for September 20 [no year indicated] that totaled \$150.00.

The Tenants uploaded a cash sale invoice for PVC solid sewer pipe that totaled \$155.46.

Tenant D.E. uploaded a handwritten invoice for machine operation hours that totaled 120 hours at \$100.00/hr totaling \$12,000.00.

Tenant D.E. drafted an email to her advocate dated April 9, 2024 showing the number of hours she completed to do the septic system install as:

May 23 2022.	
*Storm Water Management	
*Removal of Old Septic System	30hrs.
*Gray Water System	10hrs.
July 14 2022.	
*Tank Hole- Squared and Level	10hrs.
August 14 2022.	
*House to Tank-Grading and Leveling	20hrs.
September 9 2022.	
*Tank to Field-Grade and Level	20hrs.
September 11 2022.	
*Backfill	10hrs.
September 19 2022.	
*Finishing -Landscaping	10hrs.

Tenant D.E. uploaded two handwritten letters that stated she promised to pay her daughter \$10.00/hr for childcare. Tenant D.E. is seeking 410 hours totaling \$4,200.00 to cover her childcare. This expense was incurred because she was doing the septic system re-install.

The Tenants uploaded a paid invoice for clear drain rock dated June 7, 2022 that totaled \$1,050.00.

Tenant D.E. seeks compensation to pay for damage done to her vehicle because of the unmaintained driveway. The Tenants' advocate submitted that they rely on section 607 of the regional district manufactured home community bylaw which states that roadways and lanes shall be well drained and well maintained in such a manner as to render them free from dust at all times. The Tenants' advocate submitted that the road was consistently not maintained, the holes were incredibly deep and Tenant D.E.'s little car suffered damage that a mechanic had to repair. Tenant D.E.'s total compensation claim for her car repair is:

Item	For	Amount
Ron Norberg	whl b-ring, tie rod, 2 ball joint	\$568.12
Ron Norberg	2 front struts, 2 sway bar link	\$650.90
Ron Norberg-estimate	2 lower control arms	\$297.00

The Tenants uploaded three invoices:

1) April 15, 2023:

Replacement parts	2 front wheel bearings Timken \$66.12 ea.
	1 passenger side outer tie rod Dorman \$14.50
	2 front lower ball joints Mevotech \$28.44 ea.
Total parts	\$218.12
Labor	\$350
Total	\$568.12

PAID

2) June 15, 2023:

Replacement Parts	2 front struts Gabriel \$91.86 ea.
	2 swaybar links Ac Delco 33.59 ea.
Total parts	\$250.90
Labor	\$400.00
Total	\$650.90

Paid

3) This last quote is an estimate for required repairs needed on Tenant D.E.'s car.
Tenant D.E. said this repair is not completed yet, but her car needs it:

Mar 17/24 Lower front control arm bushings worn out.

In need of replacement	2- lower control arms- Moog \$48.50 ea.
Labor approx.	\$200 plus wheel alignment recommended.

The Tenants submit that all of the car repairs are expenses that the Tenants incurred due to the unmaintained driveway.

The Tenants seek that the Landlord comply with the Act and Regulation, and pay the \$20,000.00 compensation that is owed to the Tenants after receiving the 12 Month Notice.

The Landlord testified that this is a rural area. He uploaded aerial photos of the residential property. They are subjected to regional, and seasonal climate issues, and muddy driveways are part of that. The Landlord showed a blue circled area in his picture 1 that he maintained for parking in case the driveway was snowed in or muddy. This was an area that the Tenants could park at and walk into the property.

Picture 2 shows the relative layout of the Tenants' home and septic systems. The red border area was where the Tenants' home is located. The smaller beige circled area is the first septic system area built in before 2020, and the larger beige circled area is the location of the second septic system area. The silver circled area is the Landlord's home location, and the blue circled area is a pool that was available for the Tenants use.

The Landlord pointed to their tenancy agreement addendum items #4, #9, #9a, and #9b that state:

4. All repairs and labour by the tenants are considered to have no monetary value and are for the comfort and benefit of the tenants. Any purchases of materials for improvements and renovations shall be considered on a case by case basis as to whether or not a refund will be made (a receipt is necessary, hand written receipts must be from a recognizable source; such as Myers, Lumby Emporium, Habitat for Humanity) and must be made 1 month prior to an agreed refund, and may be put in writing at request.

9. The Tenant/s shall be responsible for maintaining the rental property, including:

a. disposing of and depositing all garbage and waste in a clean and sanitary manner , also considering the alternative living nature of this location that includes septic composting and grey water disposal.

b. cooperating in keeping the area neat and clean.

...

d. Snow removal and drive way maintenance is not promised nor guaranteed, an effort will be made by the Landlord/s , however due to the cost and type of equipment necessary it may not always be possible or consistent.

All the addendum items were initialled by the Tenants. No written submissions were made with the Landlord prior to the rebuild of the septic system for a refund, and no prior arrangements were agreed to for the Landlord to compensate the Tenants for the septic rebuild. The Landlord thought it was clear at the beginning that the Tenants were doing the work for their own use. The Landlord testified that whatever the Tenants' choice for septic, was theirs.

The Landlord confirmed that the addendum was a part of each and every tenancy agreement entered into by the parties.

The Landlord uploaded unnotarized, and unsigned witness statements from past tenants and friends that attest to the fact that the Landlord was clear that he was not responsible for the Tenants' septic system on the residential property.

The Landlord said the tenancy ended because of the unpaid rent situation, and not because of the 12 Month Notice. The Landlord questioned whether the tenancy was frustrated.

The Landlord said that the Tenants' claims for hours of work at \$100.00/hr are unreasonable.

The Landlord said the 120 hours of machine time is off as the machines are rented for 8 hour days.

The Landlord testified that the Tenants only used one load of the 1" clean drain rock for the septic system built. One load was placed in front of the Tenants' house, and the other load just sat in the Landlord's yard. The Landlord stated that if he is responsible for these materials for the septic system, then he is only responsible for one load at \$350.00.

The Landlord argued that the only provable claims submitted by the Tenants are the Little Digger rentals, the Andrew Sheret Ltd. sewer pipes, and the one load of drain rock.

The Landlord submitted that addendum item #9b covers the Tenants claims of damage to their vehicle. The Landlord worked at manually draining the driveway, but the seasonal muddy issues happen in their area, and on other gravel roads and public roadways. The Landlord said if the driveway was snowed in, he would pay someone to clear the driveways. The Landlord said he also drives a car, and he will park his car at the end of the driveway in the area he maintains. The Landlord says the claims for monetary losses on their vehicle is not his responsibility.

The Landlord said that the Tenants accepted the drawbacks and the rural regional difficulties living in that area. The Landlord stated that the price of rent is a direct reflection of the drawbacks of living on the property.

The Tenants replied that the Landlord must abide by the Act, and the local bylaws. The Tenants argued that although their claim is over the monetary limit for claims under the Small Claims Act, part of their claim is excluded under section 51(2)(a) of the Act.

The Tenants' advocate stated that the Landlord's work in the low spots of the driveway was not the correct way to fix the problem. Advocate M.G. said the Landlord should be installing a culvert. The Landlord's minimum work did not constitute maintenance.

The Tenants' advocate said that one load of drain rock was placed in the front of the Tenants' home for storm water control, and the Landlord is responsible for flood drainage.

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.

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Under section 60 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;

2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenants submitted that their car was damaged due to the unmaintained driveway on the residential property. The Tenants uploaded receipts for repairs to their car. I find there is no proof that the damage to the Tenants' car was due to the actions or neglect of the Landlord in failing to maintain the driveways on the residential property. The Landlord testified that he maintained an area close to the start of the driveway that the Tenants could have used when the property roads were bad, so I find the Tenants failed to mitigate the damage that they said was caused by the unmaintained driveway.

Based on the evidence provided, and the testimonies of the parties, I find that the Tenants have not proven that the damage to their car was due to the actions or neglect of the Landlord in violation of the Act, Regulation or tenancy agreement. I dismiss the claim without leave to re-apply.

Are the Tenants entitled to a Monetary Order for the cost of emergency repairs to the manufactured home site?

Section 27(1) of the Act defines emergency repairs as made when the repair is urgent, necessary for the safety of anyone or for the preservation of use of property in manufactured home park and for the purpose of repairing major leaks in pipes, damaged or blocked water or sewer pipes, electrical systems or in prescribed circumstances, the manufactured home site or the manufactured home park.

Section 27(3) of the Act allows for a tenant to complete an emergency repair when the landlord has not completed the emergency repair in reasonable amount of time and the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs.

Under section 60 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;

2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline #1-Landlord & Tenant – Responsibility for Residential Premises clarifies the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities. PG#1 states:

SEPTIC, WATER AND OIL TANKS

1. *The landlord is responsible for emptying a holding tank that has no field and for cleaning any blockages to the pipe leading into the holding tank except where the blockage is caused by the tenant's negligence. The landlord is also responsible for emptying and maintaining a septic tank with a field.*
2. *The landlord is responsible for winterizing tanks and fields if necessary.*
3. *The tenant must leave water and oil tanks in the condition that he or she found them at the start of the tenancy e.g. half full.*

The Tenants submitted that the Landlord did not intend to complete repairs to the Tenants' septic system. The Tenants stated they thought the Landlord was going to sign a 10-year lease with them, but a year after the new septic system was built, the Landlord served a 12 Month Notice on the Tenants.

During 2022, while the Tenants were building the new septic system, the Tenants said the Landlord provided instructions to her about how to build the system.

The Tenants submitted the local bylaws for the regional district manufactured home community bylaw. I find these local bylaws apply to the Landlord.

The Landlord testified that the addendum to their tenancy agreement cover that all repairs and labour by the tenants are considered to have no monetary value and are for the comfort and benefit of the tenants. Any purchases of materials for improvements and renovations shall be considered on a case-by-case basis as to whether or not a refund will be made.

Having a functional septic system on the residential property is a must, so when the septic system failed, the needed repairs were urgent. I find that the repairs were necessary for the health or safety of the Tenants, and the septic system needed to be repaired. PG#1 states that the Landlord is responsible for the maintaining the septic system.

So, although the Tenants engaged in the work, I find the Landlord is responsible for some of the costs for this repair. I find the parties did not have a clear meeting of the minds about the responsibilities for these repairs, and the Landlord's addendum terms do not absolve him of his responsibilities to repair and maintain this system.

Section 5 of the Act states:

This Act cannot be avoided

- 5** (1) *Landlords and tenants may not avoid or contract out of this Act or the regulations.*
- (2) *Any attempt to avoid or contract out of this Act or the regulations is of no effect.*

I find the addendum terms drafted by the Landlord that avoid or contract out of the Act are of no effect.

The Tenants are entitled to compensation for the following items of which they presented receipts or invoices:

Item	For	Amount
Little Digger rentals	10 days machine rental	\$2,675.00
Andrew Sheret Ltd.	4 pcs 10' solid sewer pipe	\$155.46
[town] Sand and Gravel	3 loads 1" clean drain rock	\$1,050.00

The Landlord said that the Tenants only used one load of clean drain rock for the septic system. The Tenants said the second load was used for storm water control in front of the Tenants home, and the third load was left on the Landlord's property. I find that the Landlord ultimately has the use of all the drain rock, and I will not partition this invoice on this matter.

I find that Tenant D.E.'s estimate of her work time is not a clear and reasonable approximation for the work completed. I find this submission by the Tenants to be undetailed and excessive. I also decline to award compensation to the Tenants for childcare. The uploaded evidence for those items said that Tenant D.E. promised her daughter childcare compensation. This is not an expense for which I can grant compensation to the Tenants.

Based on the evidence, the testimonies of the parties, and on a balance of probabilities, I grant the Tenants **\$3,880.46** for the septic system work they did on the Landlord's property.

Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Section 55 of the act states that an arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

In the hearing, the Tenants sought \$20,000.00 compensation that the Landlord must pay them on or before the effective date after receiving a 12 Month Notice. The Tenants have not set out this claim in their Notice of Dispute Resolution Proceeding.

I make no findings on this matter. The Tenants can apply for this matter in another dispute resolution application.

I decline to award compensation for this part of the Tenants' claim.

Are the Tenants entitled to recover the application filing fee?

As the Tenants are partially successful in their claim, they are entitled to recovery of the **\$100.00** application filing fee.

The Tenants' monetary award totals \$3,980.46 (\$3,880.46 + \$100.00).

Conclusion

I grant a Monetary Order to the Tenants in the amount of \$3,980.46. 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 of British Columbia and enforced as an Order of that Court.

The Landlord's cross application is dismissed.

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: June 20, 2024

Residential Tenancy Branch