



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Chopick Developments Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNDC, OLC, RP, PSF, and FF

### Introduction:

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to comply with the *Manufactured Home Park Tenancy Act (Act)* or the tenancy agreement; for an Order requiring the Landlord to make repairs to the site or property; for an Order requiring the Landlord to provide services or facilities required by law; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord and the Tenant agree that the original Application for Dispute Resolution and the amended Application for Dispute Resolution were served to the Landlord, via registered mail, in November of 2013.

On November 04, 2013 the Tenant submitted documents to the Residential Tenancy Branch. The Landlord and the Tenant agree that these documents were served to the Landlord, via registered mail, in November of 2013 and they were accepted as evidence for these proceedings.

On November 18, 2013 the Tenant submitted documents to the Residential Tenancy Branch. The Landlord and the Tenant agree that these documents were served to the Landlord, via registered mail, in November of 2013 and they were accepted as evidence for these proceedings.

On January 16, 2014 the Tenant submitted documents to the Residential Tenancy Branch. The Landlord and the Tenant agree that these documents were served to the Landlord, via registered mail, in January of 2014 and they were accepted as evidence for these proceedings.

On January 6, 2014 the Landlord submitted documents to the Residential Tenancy Branch. The Landlord and the Tenant agree that these documents were served to the Tenant, via registered mail, in January of 2014 and they were accepted as evidence for these proceedings.

There was insufficient time to conclude the hearing on March 04, 2014, so the hearing was adjourned. The hearing was reconvened on April 24, 2014 and was concluded on that date.

Both parties were represented at both hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is there a need to issue an Order requiring the Landlord to make repairs to the site or property; is there a need to issue an Order requiring the Landlord to provide services or facilities required by law; and is the Tenant entitled to compensation for deficiencies with the manufactured home park?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began over 20 years ago and that the Tenant is currently required to pay monthly rent of \$337.00 by the first day of each month.

The Landlord and the Tenant agree that in 2010 the Landlord began renovating the manufactured home park, which included removing manufactured homes in the park. The Agent for the Landlord stated that the Landlord intends to renovate the entire park or to sell it to another party, who she understands will complete the renovation. At the hearing on April 24, 2014 the Landlord stated that the manufactured home park was sold on March 20, 2014.

The Landlord and the Tenant agree that the Tenant's site is the only site in the manufactured home park that is currently occupied and that, apart from the Tenant, the park has been vacant since December of 2013.

The Landlord and the Tenant agree that the Landlord offered to purchase the Tenant's manufactured home for \$6,000.00, but that the Tenant declined the offer.

The female Tenant stated that the water supply to their site has been "on and off" for a "couple of years". She stated that on some occasions the water supply has been interrupted by "a couple of days", although she could not provide dates of service disruptions.

The Agent for the Landlord stated that about three or four years ago the water in the park was shut off for the purposes of repairing a leak in another manufactured home, and that water was restored to park users in "a few hours". She stated that sometime in December of 2013 the city turned off the water main to repair an issue on city property, however this was not a lengthy disruption.

The female Tenant stated that the road in the manufactured home park has not been plowed this season and that her husband and son had to shovel approximately 20 feet of snow to provide an access route to their home. The Tenant submitted no photographs of snow conditions in the park.

The Agent for the Landlord stated that the residential complex has been plowed once this year but there has not been a significant amount of snow. She stated that large trucks regularly entered and exited the park during the winter, and that the trucks compacted any snow on the ground, which made the roads passable. She stated that she accesses the site approximately once per week and has never had trouble driving on the roads.

The Tenant would like an Order requiring the Landlord to remove trees in the manufactured home park, which the Tenant contends are dead and unsafe. The Tenant provided photographs of a clump of trees, at least one of which appears to have no foliage. The female Tenant stated that one of these trees is dead and she believes it is dangerous. She stated that it is only 15 feet away from the Tenant's manufactured home.

The Agent for the Landlord stated that the Landlord has an arborist inspect the manufactured home site twice each year and that the arborist removes any trees the arborist considers dangerous. She stated that the tree in the photograph is approximately 60' away from the Tenant's manufactured home and would not pose a threat to their manufactured home even if it was unhealthy. She agrees that the tree does not have foliage, but she does not believe it is dangerous or it would have been removed by the arborist.

The Tenant would like an Order requiring the Landlord to repair potholes in the road leading to their manufactured home. The Tenant provided photographs of the condition of the road in the manufactured home park.

The Agent for the Landlord agreed that the road in the manufactured home park is not in good condition. She stated that the renovations include a plan to upgrade the roads.

The Tenant would like an Order requiring the Landlord to have all of the debris and abandoned manufactured homes adjacent to their site removed from the manufactured home park. The Tenant provided photographs of debris and abandoned manufactured home parks that have been taken as recently as October of 2013.

The Landlord agrees that there has been a delay in removing some manufactured homes and debris from the manufactured home park, in part because of delays associated with obtaining demolition permits and, in the case of the site adjacent to the Tenant, with probating a will. The Agent for the Landlord stated that they recently obtained a demolition permit for the adjacent site and that the Landlord intends to clean up that site in the near future.

The Tenant provided photographs that represent areas in the manufactured home park between April of 2009 and October 05, 2013. The Landlord does not dispute that the photographs are of the manufactured home park. The Tenant contends that the photographs demonstrate that the manufactured home park has not been properly maintained; that the grass has not been cut by the Landlord in common areas; and that the abandoned sites have been left in an unsightly manner. The Tenant contends that the Tenant has mowed the property adjacent to their site over the last year but other than that, there has been no maintenance.

The Tenant is seeking a rent reduction for the loss of the quiet enjoyment of their site as a result of the aforementioned deficiencies, for the past four years and the next 12 months.

The Agent for the Landlord stated that the common areas in the manufactured home park were mowed twice last year. She agreed that the Tenant's have experienced some disruption due to the renovations, but she contends they are minimal because the Tenant lives near the entrance to the park and does not see a significant amount of the renovations. The Landlord does not believe that the Tenant is entitled to any form of rent reduction, as the Tenant could have sold their manufactured home for \$6,000.00 and avoided any inconvenience.

At the hearing on March 04, 2014 the Agent for the Landlord stated that the female Landlord personally served the female Tenant with a Twelve Month Notice to End Tenancy on September 30, 2013. At this hearing the female Tenant stated that this Notice was personally served to the Tenant on October 02, 2013. The Notice to End Tenancy declares that the tenancy ends on September 30, 2014.

At the hearing on April 24, 2014 the Landlord stated that the Twelve Month Notice to End Tenancy was mailed to the Tenant, via registered mail, on September 30, 2013. At this hearing the male Tenant stated that the Notice was received in the mail in early October of 2013.

The male Tenant stated that the Tenant did not dispute the Twelve Month Notice to End Tenancy and that the Tenant understands that the Notice ends the tenancy on September 30, 2014.

#### Analysis:

I find that the Tenant has submitted insufficient evidence to show there have been significant disruptions with water in the manufactured home park. In reaching this conclusion I was heavily influenced by the absence of evidence, that corroborates the Tenant's claim there have been significant disruptions or that refutes the Landlord's claim there have been no significant disruptions that were the fault of the Landlord. I therefore find that there is no need to issue an Order requiring the Landlord to repair the water supply system and I find that the Tenant is not entitled to any compensation for

any disruption to this service.

Section 26(1) of the *Act* requires a landlord to maintain a manufactured home park in a reasonable state of repair, which includes having access roads plowed in a timely manner whenever there is a reasonable amount of snow accumulation.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord has not cleared the roads of snow in the manufactured home park in a timely manner. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, that corroborates the Tenant's claim that the roads have not been properly cleared of snow this winter or that refutes the Landlord's claim that the roads did not require plowing this winter, except for the one occasion when they were plowed.

As the Tenant has failed to establish that the Landlord has not plowed the roads when necessary, I find there is no need to issue an Order requiring the Landlord to plow the roads. To provide clarity to this issue, however, the Landlord is reminded of the Landlord's obligations under section 26(1) of the *Act*, which requires the Landlord to provide the Tenant with access to their site, by removing snow when necessary.

I find that the Tenant has submitted insufficient evidence to show that a tree in the manufactured home park poses a risk to the Tenant or the Tenant's home and I therefore dismiss their application for an Order requiring the Landlord to remove this tree. In reaching this conclusion I was influenced by the following:

- The Agent for the Landlord's testimony that the park is regularly inspected by an arborist, who has not indicated this tree is dangerous
- The absence of documentary evidence from an expert to corroborate the Tenant's concern that the tree is dangerous
- The absence of evidence to corroborate the Tenant's claim that the tree is 15 feet away from their manufactured home or to refute the Landlord's claim that it is approximately 60 feet from the home.

On the basis of the photographs submitted in evidence, I find that the roads in the manufactured home park are passable, although they are not in good condition. As the roads are passable, I dismiss the Tenant's application for an Order requiring the Landlord to repair the roads. In reaching this conclusion I was heavily influenced by the undisputed evidence that the manufactured home park is being completely renovated. In my view, it is logical to presume that a major renovation will include upgrading the roads in the park and I therefore find there is no need to issue an Order requiring the Landlord to make that repair. In the event the roads are not upgraded during the renovation, the Tenant retains the right to file another Application for Dispute Resolution seeking this repair.

On the basis of the photographs submitted in evidence, I find that there is debris, including abandoned manufactured homes, at various locations in the manufactured home park. As the debris does not directly impact the Tenant's ability to use their

manufactured home site, I dismiss the Tenant's application for an Order requiring the Landlord to remove the debris. In reaching this conclusion I was heavily influenced by the undisputed evidence that the manufactured home park is being completely renovated. In my view, it is logical to presume that a major renovation will include cleaning the debris from the park at various stages in the renovation and I therefore find there is no need to issue an Order requiring the Landlord to remove the debris. In the event the park remains unsightly at the end of the renovation, the Tenant retains the right to file another Application for Dispute Resolution seeking a remedy.

Section 22 of the *Act* stipulates that a tenant is entitled to the quiet enjoyment of their site including, but not limited to, rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with section 23 of the *Act*, and use of common areas for reasonable and lawful purposes, free from significant interference.

On the basis of the undisputed evidence, I find that the Landlord is in the process of renovating the manufactured home park, which involves, in part, removing and dismantling abandoned manufactured homes. On the basis of the photographs submitted in evidence by the Tenant, I find that the manufactured home park has not been well maintained during these renovations.

In my view, the abandoned manufactured homes, the poorly maintained sites and common areas, and the debris that has been left on the sites interferes with the Tenant's right to the quiet enjoyment of their site and the common areas. This decision is based on my belief that viewing the abandoned/neglected areas would negatively affect most people's ability to enjoy their own site.

Awarding compensation for the reduced value of a tenancy arising out of the breach of a tenant's right to quiet enjoyment is highly subjective and difficult to quantify, however I find that a rent reduction of 10% in these circumstances is reasonable. In determining the amount of the rent reduction, I was heavily influenced by the undisputed fact that the Tenant had full use of their site and that the loss of quiet enjoyment arises solely from the aesthetic impact of the remainder of the park.

As the Tenant filed this Application for Dispute Resolution in November of 2013, I find it reasonable to presume that their claim for "4 yrs back rent reduction" refers to the period from November 01, 2009 to November 31, 2013. As the parties agree that the park renovations did not commence until 2010, I grant the Tenant a rent reduction of \$50.55 per month, which is 15% of the monthly rent, for the 46 months between January 01, 2010 and November 30, 2013. This represents a rent refund of \$2,325.30.

As the Tenant filed this Application for Dispute Resolution in November of 2013, I find it reasonable to presume that their claim for a "reduction in rent for next 12 months" refers to the period from December 01, 2013 to November 30, 2014. I grant the Tenant a rent reduction of \$50.55 per month, which is 15% of the monthly rent, for the 5 months

between December 01, 2013 and April 30, 2014. This represents a rent refund of \$252.75.

On the basis of the undisputed evidence, I find that the Tenant was served with a Twelve Month Notice to End Tenancy, which declared that the Tenant must vacate the rental unit by September 30, 2014. On the basis of the testimony of the Landlord, I find that this Notice was mailed to the Tenant on September 30, 2013. As the Tenant acknowledged receiving the Notice on October 02, 2013, I find it reasonable to conclude that the Notice was received on that date.

Section 42(2) of the *Act* stipulates that a Twelve Month Notice to End Tenancy is effective not earlier than 12 months after the date the notice is received and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is due. As the Notice was received on October 02, 2013, I find that the earliest effective date of the Notice is October 31, 2014.

Section 46 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy is October 31, 2014.

Section 42(4) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 42 of the *Act* and that the tenants must vacate the rental unit by that date unless the tenants dispute the notice within 15 days of receiving it. As there is no evidence that the Tenant filed an application to dispute the Twelve Month Notice to End Tenancy, I find that the Tenant accepted that the tenancy is ending on the effective date of the Notice, pursuant to section 42(5) of the *Act*.

I decline to award this compensation for loss of quiet enjoyment for any months after April of 2014, as the Tenant has the right to end this tenancy prior to the effective date of the Notice to End Tenancy, in which case the Tenant would not be entitled to this rent reduction. In the event that the tenancy continues after May 01, 2014, I authorize the Tenant to reduce the monthly rent payment for May by \$50.55 and to reduce each subsequent rent payment by \$50.55 until such time as the tenancy ends or the renovations to the manufactured home park are complete.

In determining the amount of the rent reduction, I attempted to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the property. While I accept the Landlord has every right to renovate the manufactured home park, it is not reasonable for the Landlord to expect to recover full rent for a site when the Tenant is denied the full "benefit" of the manufactured home park.

In determining the amount of the rent reduction, I was influenced by the fact that the Tenant accepted the tenancy is ending on the basis of the Twelve Month Notice to End

Tenancy. As the Tenant was aware that their tenancy was ending, the Tenant could have mitigated the impact of the renovations by simply opting to vacate prior to the effective date of the Notice to End Tenancy.

In determining the amount of the rent reduction, I was influenced by the male Tenant's declaration that he hopes to enter into a tenancy agreement with the new owner of the manufactured home park. I therefore find it reasonable to conclude that the renovations will significantly benefit the Tenant if the Tenant remains in the park.

I find the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion:

The Tenant has established a monetary claim of \$2,678.75, which is comprised of \$2,578.05 in compensation for living with the renovations and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims 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: April 25, 2014

---

Residential Tenancy Branch

