# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing dealt with an application by the tenant under the *Manufactured Home Park Tenancy Act*

- A monetary order for compensation for damage or loss under the *Act* pursuant to section 60 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 65.

The agent NH attended for the landlord ("the landlord"). The tenant attended with three witnesses, RD, KL and OV. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord acknowledged receipt of the tenant's evidence.

*Preliminary Issue – Service of Landlord's Evidence*

The landlord testified he sent his evidence package to the tenant on April 3, 2020 at the last email address the landlord had for the tenant. He did not submit a copy of the email.

The tenant denied receipt of the landlord's evidence. The tenant stated that she had blocked the landlord's email in "March or April 2019", one year prior to the hearing, because of his "harassment". The landlord acknowledged he had not received any email from the tenant since then.

The tenant stated that following the sale of her mobile home in August 2019, she notified the landlord by a letter dated March 9, 2020 that she had a new mailing address outside the province. A copy of this letter was submitted which the tenant testified was sent by registered mail. The landlord acknowledged receipt of the notice.

Pursuant to sections 71(2)(b) and (c) of the *Residential Tenancy Act* and sections

64(2)(b) and (c) of the *Manufactured Home Park Tenancy Act,* the Director ordered that until the declaration of the state of emergency made under the *Emergency Program Act* on March 18, 2020 is cancelled or expires without being extended, the following rules concerning service by email are in force:

> *• a document of the type described in section 88 or 89 of the Residential Tenancy Act or section 81 or 82 of the Manufactured Home Park Tenancy Act has been sufficiently given or served for the purposes of the applicable Act if the document is given or served on the person in one of the following ways: • the document is emailed to the email address of the person to whom the document is to be given or served, and that person confirms receipt of the document by way of return email in which case the document is deemed to have been received on the date the person confirms receipt;*
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> *• the document is emailed to the email address of the person to whom the document is to be given or served, and that person responds to the email without identifying an issue with the transmission or viewing of the document, or with their understanding of the document, in which case the document is deemed to have been received on the date the person responds; or*
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> *• the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed*
>
> [emphasis added]

In considering the testimony of the parties and the evidence, I find the landlord and tenant have not corresponded by email for about a year. Therefore, I find that the tenant's email address in not one "*routinely used* to correspond about tenancy matters" as required under the above Order.

I find the landlord has not served the documents according to the above Order. Therefore, I will not consider the landlord's evidence.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The parties agreed that this month-to-month tenancy, being the rental of a site in a manufactured home park, began on September 1, 2014 and the tenant vacated on August 31, 2019 when she sold her mobile home.

The tenant said she is a 73-year old woman. She described the park as having many senior occupants "in their 70's and 80's" who were friends and mutually supportive, often meeting in the park's clubhouse which was a center of social activity.

Rent in the amount of $497.85 was payable on the 1st day of each month and there are no rental arrears. The tenant paid a $20.00 monthly fee for use of the clubhouse which was included in the rent.

The occupants of the park had many disputes with the landlord which have resulted in 9 previous arbitrations and 14 hearings. The tenant stated that all applications were brought by tenants who succeeded in all cases. She testified that she was involved in all these applications, as either the lead applicant of a group, the sole applicant, or a witness.

A summary of some of these disputes appears later as they relate to this case.

The most recent Arbitration dealt with an application by the tenant to cancel a One Month Notice to End Tenancy for Cause which the landlord served in October 2018. The tenant said the arbitration took five hours over two sessions and resulted in a 14-page Decision dated December 11, 2018; the file number is referenced on the first page. The Arbitrator ordered that the landlord's Notice was cancelled as it was issued "in retaliation" against the tenant.

A copy of the Decision was submitted as evidence by the tenant. The tenant testified that the previous Arbitrator accurately reported her testimony about the landlord's past behaviour.

There is a long history of tension between the parties. For the purposes of this Decision, a brief summary of the key salient events follows:

- The tenant's tenancy began in 2014.

- In January 2016, the tenant joined with several other occupants in the park to seek repair orders of the septic system. The Arbitrator ordered the landlord to inspect and service the system.

- In February 2017, several tenants again brought applications claiming the landlord had not complied with the Order of January 2016. The Arbitrator wrote,

  > *"It is unfortunate the landlord refused to comply with the order of the previous arbitrator. The landlord is put on warning that continued refusal to comply with the Act, regulations and tenancy agreement and to comply with an arbitrator's order may give tenants have the rights to make additional applications for the further reduction of rent."*

- In March 2017, the landlord requested a Review Hearing; the application was rejected.

- In August 2017, several tenants joined to be heard regarding non-compliance with inspection and service of the septic system; this application resulted in an order made against the landlord and damages in favour of the tenants.

- In November 2017, in an application by other occupants in the park to set aside rent increases, the landlord's testimony was found to be "weak and not believable".

- The landlord applied for a Review Hearing and the application was rejected.

- In December 2017 and March 2018, two applications were heard and dismissed for lack of jurisdiction.

    - The applicants, other occupants in the park, claimed the landlord was deceitfully informing prospective purchasers that they, the occupants, owed various fabricated amounts for unpaid rent and storage fees, notifying the tenants at the last minute in order for the landlord to receive unjustifiable pay-outs on sales.

- The tenant testified that one of these Applications has recently resulted in a civil court decision in favour of one of the applicants. She testified that several occupants of the park are also plaintiffs against the landlord in efforts to recover funds they claim are owing them by the landlord.

- In September 2018, the landlord's Notice to End Tenancy for Cause against another occupant of the mobile home was dismissed.

- In October 2018, the landlord installed a security camera in the park's clubhouse without warning the tenants or getting their permission. The landlord stated the "security" was necessary to prevent theft. The tenant testified that she, along with all other occupants, strongly opposed the presence of the camera, believed their privacy was being violated, and denied that thefts were taking place.

- The landlord issued a One Month Notice to End Tenancy for Cause against the tenant dated October 17, 2018. The landlord's various allegations against the tenant included that she spat on him and called him racist names. The tenant applied to set aside the Notice, claiming it was issued in retaliation for her part in previous Applications and her objection to the security camera.

- In November 2018, the tenant contacted the police to complain about the landlord in his vehicle following her vehicle; the landlord denied following the tenant.

- The Arbitrator in the December 11, 2018 Decision concluded the Notice against the tenant was issued by the landlord out of retaliation. The Arbitrator found that the landlord was not afraid of the 70-year old tenant as he alleged. The Arbitrator also found that the landlord had ignored RTB Orders. The Arbitrator stated in part as follows:

    - *Having reviewed all of the evidentiary material of the parties,* ***I find that the landlord has issued the notice to end the tenancy out of retaliation****.*

    - ***The landlord has ignored orders of the director and has attempted on at least 2 occasions to re-argue cases that have already been adjudicated upon.***

    - *[…]* ***I am not satisfied that an assault occurred by spitting, or that the***

***landlord or the landlord's agent are fearful of the tenant, or that the tenant has significantly interfered with or unreasonably disturbed the landlord.***

- *The One Month Notice to End Tenancy for Cause is cancelled, and the tenancy continues.*

[emphasis added]

- The tenant testified that the retaliation against the tenant intensified after this Decision. Following the Decision of December 11, 2019, in an undated letter, a copy of which was submitted, the landlord banned the tenant from the clubhouse for 6 months.

  - The letter stated that the tenant had "decorated the clubhouse with Christmas decorations without approval of management".

  - The landlord accused the tenant of failing "to abide by the rules and regulations stated in your agreement by hosting events at the clubhouse without booking them through management".

- The tenant submitted as evidence P-7 a copy of an undated letter from the landlord in which he accused the tenant of stealing and selling a foosball table and a shuffle board table (the "games tables") from the clubhouse. The landlord threatened "legal action to the full extent" by March 30, 2019 if payment of $3,750.00 was not received.

- The tenant submitted as evidence P-8 a copy of a letter of April 15, 2019 from the landlord in which he extended the ban on the tenant's use of the clubhouse to February 2020. The letter stated in part as follows (emphasis added):

  - *This letter is regarding the response we received about the theft situation in the clubhouse. We are continuing to investigate this issue, since you have stated that you have not stolen anything. As we continue to investigate this,* ***your ban for entering or using the clubhouse premises had been extended another 8 months.***

  - *Currently your ban lasts till June 12, 2019; however, now your ban will last till February 12, 2020.* ***Failure to comply will ultimately result in a***

***permanent ban from the clubhouse*** *[…]*

- In a subsequent letter, a copy of which was submitted as P-9, the landlord warned the tenant as follows:

    - ***Keep in mind that this number [$3,750.00] can increase as time goes on, and costs keep adding up.***

- The landlord acknowledged he did not report the alleged theft to the police. The landlord testified that the calculation of the amount owing of $3,750.00 was based on prices he found on the internet for new games tables. The landlord did not provide receipts for the purchase. He denied that any of his actions were motivated by a desire to retaliate against the tenant.

- The tenant testified about the negative effect of the banning from the clubhouse. She spoke about the protestations of other occupants to her banning, and the growing sense she had of betrayal and abuse of authority by the landlord.

- The tenant testified at length about the allegation of theft by the landlord. She denied the contention she would steal anything, much less huge and unwieldly games tables. She claimed the tables were very heavy, one being several hundred pounds and it was preposterous to accuse the tenant of stealing them.

- The tenant testified that the allegation of theft was retaliatory and was subsequently used to extract money from her upon the sale of her mobile home.

- Shortly afterward, the tenant decided she could not live in the park any longer and that she had to move “for her safety and sanity”.

- The tenant listed her mobile home for sale and sold it at the end of August 2019.

- Shortly before the sale, the landlord reported to the lawyers conducting the transaction that the tenant owed him $3,750.00. As stated, the tenant claimed this was a fabricated amount devised by the landlord to engage in further retaliation. However, the landlord claimed it was the sum necessary to replace the games tables with new ones.

- As a result of the landlord’s claim that he was owed $3,750.00 by the tenant, this amount was held back from the proceeds due to the tenant upon the sale of her

mobile home; the sum remains in trust until such time as the landlord withdraws his claim or the tenant consents to the landlord receiving the money.

- The tenant requested a monetary order in the amount of $3,750.00 as well as $252.00 paid in legal fees with respect to the alleged debt.

- The tenant also claimed reimbursement of the sum of $500.00 which is held in trust by the lawyer as a retainer on future legal fees to resolve the issue of the alleged theft and hold back.

The tenant claimed that the landlord increasingly perpetrated unreasonable disturbances which increased in intensity from the time she moved in until the tenant finally vacated. These disturbances were a vengeful response to the tenant's participations in the prior Applications to compel the landlord to carry out maintenance and repairs.

The tenant testified she lost confidence that she could "make the landlord do the right thing". She said that the landlord's ongoing, ceaseless efforts to get revenge led to her feeling "threatened and intimated".

The tenant testified that she became afraid of what the landlord would do next. The tenant said that by the spring of 2019, it was clear to her that matters would not get any better and would only get worse. She said she could not stand it any longer, feared for her health and safety, and believed she had no choice but to leave.

The tenant asserted that the landlord's actions "unreasonably disturbed" her and amounted to loss of her right to quiet enjoyment.

The tenant's primary claims for loss of quiet enjoyment fall under two main headings:

1. The landlord increasingly and ceaselessly progressively retaliated against the tenant for being an active participant in dispute resolution cases; for example, he issued the One Month Notice in October 2018 and banned the tenant from the clubhouse, a common area;
2. The landlord falsely and deceptively accused the tenant of theft of the games tables, fabricated landlord-tenant accounts to claim $3,750.00 owing by the tenant, and manipulated the hold back of the proceeds of the tenant's mobile home.

Each of the tenant's claims are discussed in turn.

*#1 The landlord increasingly and ceaselessly progressively retaliated against the tenant for being an active participant in dispute resolution cases; for example, he issued the One Month Notice in October 2018 and banned the tenant from the clubhouse, a common area.*

The tenant asserted that the landlord fabricated the incidents upon which he relied to allege cause for the issuance of the Notice. These incidents accused allegations that she spat on the landlord and called him racist names, assertions which were not considered credible by the Arbitrator.

The tenant denied that she had done anything to warrant being banned from the clubhouse, a common area; she asserted that putting up Christmas decorations without the landlord's consent did not amount to a reason to ban her. She claimed that the landlord acted in retaliation to extract revenge for the previous Decision which was in her favour. The tenant asserted that the banning had the sole purposes of causing discomfort, embarrassment and isolation.

The landlord denied all the tenant's assertions claiming that she acted rudely by behaving poorly, such as by spitting on him and calling him names. He asserted she was an undesirable tenant who flouted rules and his efforts to manage the park efficiently.

*# 2. The landlord falsely and deceptively accused the tenant of theft of the games tables, fabricated landlord-tenant accounts to claim $3,750.00 owing by the tenant, and manipulated the hold back of the proceeds of the tenant's mobile home..*

The tenant testified that the landlord made unsubstantiated allegations of theft which deeply distressed the tenant and resulted in a loss of $3,750.00 which is in trust and over which the landlord has control. The tenant asserted this was a violation of the landlord's duty to provide fair and accurate accounting to the tenant and was akin to an overcharging under the agreement.

In response to the tenant's testimony and evidence, the landlord repeatedly denied responsibility for any of the events claimed by the tenant. In summary, the landlord stated as follows:

- The landlord was always doing what was right in the circumstances and wanted "people to follow rules";
- The tenant was not telling the truth and she is "not the person she portrays";
- The landlord acknowledged banning the tenant from the clubhouse in December 2018 when the above previous Decision was made, but said he was because of

the tenant's wrongful behaviour in the clubhouse, such as obscuring the range of of the surveillance camera, and not out of revenge;

- The landlord, while "willing to negotiate", wanted the tenant to pay for the allegedly stolen games tables which he asserted she stole;
- While acknowledging that he had not reported the alleged theft to the police, the landlord said he did not believe there was any need.

The tenant claimed damages of $30,000 which included reimbursement of $3,750.00 which was held back from the sale of her mobile home, reimbursement of $180.00 for clubhouse fees ($20.00 a month for 9 months), repayment of incurred legal fees relating to the hold back of $252.00, and reimbursement of $500.00 held back for potential legal fees.

Analysis

The tenant submitted a well organized, comprehensive 90-page evidence package in support of her testimony. While I have turned my mind to the documentary evidence and the testimony, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

Section 7(1) of the Act provides that if a landlord does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord must compensate the tenant for damage or loss that results. The party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Section 22 of the *Act* deals with the tenant's right to quiet enjoyment. The section states 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 rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
> (d) ***use of common areas for reasonable and lawful purposes, free from significant interference.***

[emphasis added]

*Policy Guideline 6 – Entitlement to Quiet Enjoyment* provides guidance on issues that are likely to be relevant to applications under this heading.

Section 60 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. 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. *Policy Guideline 16 – Compensation for Damage or Loss* provides guidance on determining damage or loss and compensation.

*Tenant's claim: loss of quiet enjoyment*

The tenant claimed that the landlord violated her right to freedom from unreasonable disturbance and use of the common area, the clubhouse.

*The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment* states as follows:

> *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 breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16).*
>
> (Emphasis added)

The parties have sharply contrasting narratives.

In assessing the credibility of the landlord, I find that he provided unbelievable, implausible evidence that did not accord with the facts as I find them. I find the landlord's testimony about his interactions with the tenant and his good motivations to be self-serving and unreliable. I characterize many of the landlord's recollections as being fabricated in order to attempt to cast a better light on his poor behaviour and to excuse his non-compliance with his obligations as a landlord.

The landlord portrayed himself during the hearing as having no responsibility for the key areas of dispute between the parties. He improbably blamed the tenant and the other occupants whenever possible.

As a result of these observations and findings, I give very little weight to his evidence.

I found the tenant's evidence forthright, credible and articulate. Her narrative accords with the previous Decision. I give considerable weight to her testimony which was supported in all material respects by the documentary evidence.

I believe the tenant's testimony, supported by the previous Decision and her evidence, that the tenants, most of them seniors, tried repeatedly to force the landlord to comply with the landlord's obligations to repair and maintain. I find the landlord often

inexcusably disobeyed or delayed in carrying out these Orders. I find the landlord retaliated against the tenant for her ;leadership role in the Applications and steadily increased his unreasonable and retaliatory conduct.

I accept the tenant's description of the landlord's increasingly retaliatory actions. I do not find the landlord's denials and explanations to be credible.

As found in the previous Decision, the landlord issued the One Month Notice in October 2018 as an act of retaliation. I find that the landlord continued to act in a retaliatory manner by banning the tenant from the common area, the clubhouse, for the final 9 months of the tenancy, by falsely accusing the tenant of theft, and by manipulating the sale of her home in the hope of gaining $3,750.00 of the tenant's money.

I accept the tenant's evidence and find that the landlord showed no signs of stopping his progressively vengeful behaviour; she reasonably expected the landlord would continue to retaliate against her and feared further escalation. I accept her statements that she grew increasingly afraid of the landlord and worried about what he would do next. I find that as a result of the landlord's retaliatory actions, the tenant realized she had no choice but to sell her home and leave the park.

I accept the tenant's testimony that her friends lived in the park and the clubhouse was the social center and common area. I find the landlord retaliated against the tenant as evidenced by his banning her from the clubhouse, his absurd allegations that she stole games tables and his manipulation of the park's accounts regarding the sale of her mobile home to fabricate a debt.

I believe the tenant's evidence that the landlord became "progressively worse", behaving increasingly badly to the tenant and others, and making it impossible for her to continue to live in the park. I find the landlord seriously disrupted the tenant's right to quiet enjoyment. Taking into account the testimony and evidence, I find the tenant is entitled to damages commencing October 2018 until August 2019, a period of 11 months.

In consideration of the quantum of damages, I refer again to the *Residential Tenancy Policy Guideline # 6* which states:

> *In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the*

*right to quiet enjoyment of the premises, and the length of time over which the situation has existed.*

I find that the landlord flagrantly ignored his obligations to the tenant to provide quiet enjoyment for the reasons stated above. I find the tenant was wholly deprived of her right to live peacefully by the inexcusable and retaliatory actions of the landlord for this 11-month period.

I have considered the history of this matter, the parties' testimony and evidence, and I find the tenant has met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment from October 2018 until she vacated in August 2019, a period of 11 months. I find it is reasonable that the tenant should receive compensation in the amount of 100% of the rent paid for this period.

*Debt of $3,750.00*

I find that the landlord falsely claimed that the tenant had committed theft in order to claim this amount from the proceeds of the tenant's mobile home.

I find that the landlord falsely reported this as a debt owing under the tenancy agreement, thereby setting in motion to hold back. I find the landlord manipulated a hold back of the proceeds of sale of the tenant's mobile home. I accept the tenant's evidence that she is unable to obtain the return of the funds.

I find the landlord's breach of his obligations to provide a correct accounting under the tenancy agreement has led to overcharging the tenant who has incurred a loss of $3,750.00 and $252.00 for legal expenses.

I accordingly award the tenant a monetary award of $3,750.00 and $252.00 (total $4,002.00).

*Clubhouse Dues*

I find the landlord barred the tenant from the clubhouse for 9 months before she left out of retaliation and for no good reason. As the fee for the clubhouse use is covered in the rent, I do not award a separate amount under this heading.

*Potential Legal Expenses*

I do not award the tenant reimbursement of potential legal expenses as they are not an incurred expense for which compensation can be claimed.

*Filing Fee*

I find the tenant is entitled to reimbursement of the filing fee of $100.00.

*Summary*

In summary, I award the tenant the following:

| ITEM | AMOUNT |
|---|---|
| Loss of quiet enjoyment 100% of $497.85 x 11 | $5,476.35 |
| Hold back and legal fees | $4,002.00 |
| Reimbursement filing fee | $100.00 |
| **TOTAL AWARD** | **$9,578.35** |

Conclusion

I grant the tenant a monetary order in the amount of **$9,578.35**

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) to be 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 21, 2020

Residential Tenancy Branch