



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes LRE, MNDC, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement, an Order for the landlord to comply with the *Act*, regulation or tenancy agreement, an Order for to suspend or set conditions on the landlords right to enter the rental site and a Monetary Order to recover the filing fee.

The tenant served the landlord by registered mail on January 15, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 82 of the *Manufactured Home Park Tenancy Act (Act)* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to an Order to suspend or set conditions on the landlords' right to enter his rental site?
- Is the tenant entitled to a Monetary Order for money owed or damage or loss under the *Act*?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?



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Background and Evidence

This month to month tenancy started on August 01, 2004. The tenants' rent for this site, on the manufactured home park, is \$481.44 per month and is due on the first of each month.

The tenant testifies that he returned home from work on November 10, 2009 and found two tree removers taking a tree down on his site. They were lowering the branches down by rope and then cut the trunk and dropped these sections from the tree on his site along with branches and trunks of two adjacent trees. These tree stocks were of a large size and as they were thrown down to the tenants' yard they crushed and damaged the tenants' plants, garden lights and a fence panel. The tenant also claims that the landlord did not give him 24 hours written notice to enter his site.

The tenant claims that it is difficult to put a value on the damaged plants as some were mature plants. The damaged plants were a mature Rhododendron (unknown value), 3#5 Hedging Cedars \$17.00 when purchased, a Purple Gooseberry bush \$59.00 when purchased, a Crown of Thorns shrub \$18.00 when purchased, 10 Solar garden lights \$59.00 when purchased and several other garden perennials, Hollyhocks, Strawberry plants and a Lions Bane bush. He has estimated the total value to be \$500.00 for these items. The tenant has provided photographs of his yard during this time which shows the tree stocks and branches all over his yard laying on shrubs, hedges and plants.

The landlord testifies that he does not give the tenants 24 hours written notice to enter their site as he has done this in the past and the notices were ignored by the tenants. The landlord states that the tree removal is a necessary job every three to four years to prevent the trees coming down on the power lines. The landlord states that it is too much to coordinate notification for 25 tenants when this work has to take place and therefore he no longer provides tenants with 24 hours notice of entry. The landlord states the work is essential to prevent damage to the power lines and mobile homes and therefore is an emergency repair. The landlord claims that he is not

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responsible for the actions of the contractors who cut the trees and the tenant should pursue their company for any damages to his property.

The tenant states he had no objection to the work being carried out but he should have had 24 hours notice of this work and the entry to his site. The tenant testifies his objection is to the way the trees were cut down with no respect or regard to his property. The tenant also states that recently the landlords' workers cut the water off without notice to the tenant while work was being completed. The tenant requests an Order for the landlord to comply with the Act and give the tenant written notice of anything that may affect his tenancy or to suspend or set conditions on the landlords' right to enter his site.

The tenants witness gave his testimony. This witness testifies that he observed the after effect of the trees being cut down and the damage to the tenants' property. There were branches and tree trunks all over the yard which had damaged the plants, the garden lights and a lattice fence panel.

The tenant also testifies that he has had an ongoing dispute with the landlords' manager, who lives in the home next to the tenant, over property lines. The property line has been moved three times in five years with the easement between the properties being in constant dispute. The tenant requests that the landlord resolves this issue regarding the property lines and easement.

The landlord states that the tenant and his manager do not get along.

Analysis

I have considered all the evidence before me, including the affirmed evidence of both parties and the witness. I find that section 23 of the *Act* states that a landlord must not enter a manufactured home site that is subject to a tenancy agreement for any purpose unless one of the following apply

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- The tenant has given his permission at the time or the landlord has given the tenant at least 24 hours written notice
- The landlord has an Order by the director authorizing enter
- The tenant has abandoned the site
- An emergency exists and the entry is necessary to protect life or property
- The entry is for the purpose of collecting rent or serving a notice.

In this instance I find the landlord is in breach of section 23 of the *Act*. I find that this type of work is maintenance of the site and as it is something which is carried out every three to four years to prevent trees falling onto the power lines or mobile homes this does not constitute emergency work. Consequently, I **Order** the landlord to comply with section 23 of the *Act* with regard to entry to the tenants' site for any maintenance work required on the tenants' site. No further orders will be issued to set or suspend conditions on the landlords' right to enter the tenants' site.

With regard to the tenants claim for money owed or compensation for damage or loss under the *Act*; I find the landlords argument that the contractors are responsible for any damage to the tenants' property has little weight. The landlord contracted the work to cut the trees to this company and as contractors they are acting on behalf of the landlord. Therefore, I find the landlord is responsible to compensate the tenant for the damage to his property.

The tenant has declared that he is unable to put a price on some of the plants and shrubs damaged by the trees but has made a total claim of \$500.00 for the damaged plants, fence panel, and 10 broken garden lights. Considering the cost of replacing mature plants, shrubs and hedges, fence panels and garden lights I do not find the tenants claim for damages unreasonable and consequently I uphold his claim for **\$500.00** in damages pursuant to section 60 of the *Act*.



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I further Order the landlord to resolve the issue with boundary lines which has developed between the tenant and the landlords manager. **I ORDER** the landlord to determine the boundaries for each site and mark these clearly so the tenant and manager are both aware of their own boundary lines so each party is aware of their use and occupation of their own site pursuant to section 55(3) of the *Act*.

As the tenant has been successful with his claim I find he is entitled to recover the **\$50.00** filing fee paid for this application from the landlord. The tenant is entitled to a monetary award of **\$550.00** and may deduct this amount from his next two monthly rent payments at **\$481.44** from the rent due on March 01, 2010 and **\$68.56** from rent due on April 01, 2010.

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. The tenant may deduct the amount of \$550.00 from the next two rent payments due to the landlord as detailed above.

I HEREBY ORDER the landlord to comply with section 23 of the *Act*.

I HEREBY ORDER the landlord to resolve the issue with boundary lines between his manager of the manufactured home park and the tenant by March 01, 2010.

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: February 18, 2010.

Dispute Resolution Officer