



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and their witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order in the amount of \$4950.00 for compensation for damages and lost.

Background and Evidence

The applicant testified that:

- A 100 foot dead tree fell down at the rental property and crushed three of his vehicles.
- They had had been previously warned by an official, whom he thought was from the fire department, that the trees were dead and needed to be removed.
- As a result they passed the information onto the landlord.

- The landlord chose to ignore the warning and as a result a dead tree blew over and caused the damage to his vehicles.
- He also had to pay to have the tree removed from the rental property.

The applicant is therefore requesting an order as follows:

Tree removal and clean up	\$900.00
Crushed 88 Chevy low rider truck(uninsured)	\$1200.00
Insurance deductible on crushed 90 Jeep	\$300.00
Filing fee for dispute resolution	\$50.00
Total	\$4950.00

Witness for the applicant testified that:

- She was present when a person in uniform, who she thought was from the fire department, came to the property and warned them that the dead trees on the property should be removed.
- As a result they warned the landlord that the trees should be removed.

The landlord's agent testified that:

- Because the tenant had made allegations in the application that the Fire Department had warned the landlord he should be removing dead trees, he checked with the Fire Department and they never issued any such warning. (Letter attached)
- He also checked with the bylaw officer for the Winfield area and was informed by the bylaw officer that they never issued any such warning as well.
- There is no record of any request from the applicant's to have dead trees removed.
- He checked with Lake Country clean up, and was informed that the tree was not a dead tree and in fact looked like a healthy tree that had just blown over.

Under questioning from the landlords agent the applicant admitted that it was he who wrote the invoice for the cleanup of the tree stating that Lake Country clean up did not have an invoice with them. He further stated that the person from Lake Country clean up had then signed the invoice.

Analysis

It is my decision that the applicant has not met the burden of proving any of his claims against the landlord.

The applicant has admitted that it was he who wrote out the invoice for tree removal and clean up, and although he claims that the invoice was then signed up by the person who did the cleanup, there is no such signature on this invoice. The applicant has provided no further proof of having paid anyone to remove the tree and clean up the property.

The applicant has also provided no proof to show that the landlord was ever asked to remove trees from the property, or warned that some of the trees on the property were dead. In fact there is no evidence to show that this particular tree was a dead tree.

In both written statements, the applicant and the witness stated that the Lake Country Fire Department advised them to remove the trees, however that has proven to be untrue and although the parties claim that someone in a uniform told them to do so they have supplied no evidence in support that claim.

In the absence of any evidence to the contrary I find no negligence on the part of the landlord and therefore will not hold him liable for any of these damages caused by the tree that fell

Conclusion

This application is dismissed in full 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 *Residential Tenancy Act*.

Dated: June 20, 2011.

Residential Tenancy Branch