



DECISION

Dispute Codes:

CNC, FF

Introduction

The tenants have applied to cancel a 1 Month Notice ending tenancy issued for Cause and return of the filing fee costs

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

Preliminary Matter

The tenants indicated they did not wish to apply for return of the deposit paid; this portion of the application was withdrawn.

The landlord's evidence package was served to the tenant's via registered mail on February 13, 2012; the tenants received the package less than 5 days prior to the hearing, as they had been away. The tenants confirmed that they had no issue with service of the evidence and that they were prepared to proceed with the hearing.

Issue(s) to be Decided

Should the 1 Month Notice Ending Tenancy for Cause issued on January 18, 2012.

Background and Evidence

The landlord and tenants agree that a 1 Month Notice to End Tenancy for Cause was served on the tenants indicating that the tenants were required to vacate the rental unit on February 29, 2012. On January 27, 2012, the tenants applied to cancel the Notice.

The Notice was issued as a result of severe tree pruning that the tenants undertook without the prior permission of the landlord. The property is a rural acreage that had significant value due, in part, to the treed and private site.

The reason stated for the Notice to End Tenancy was that the tenants have caused extraordinary damage to the rental property.

The landlord submitted a significant amount of evidence in support of the Notice issued to the tenants including: past property assessments; numerous photographs taken before and after the tenants cut the trees; an assessment of the potential loss of property value made by their realtor; garden plan maps; written submissions from the property management company and an assessment made by a consulting arborist.

The property owners reside in Ontario and have employed a professional property management company who has managed the property for at least the past 5 years.

On September 30, 2011, the parties signed a 7 month fixed term tenancy agreement which required the tenants to vacate the unit at the end of the fixed term; May 31, 2012. Rent is due on the first day of each month. The parties signed a previous fixed-term agreement which ended on October 31, 2010; this was followed by the current fixed-term tenancy.

The original tenancy agreement included a statement of understanding; a lawn and garden maintenance document; and a September 23, 2010, document setting out general and specific maintenance and property terms, such care of the water system, irrigation and garden and a requirement that plants not be dug up or moved without the owner's permission. Clause 44 of the current fixed-term included a declaration that the previous addendums continued to form a material part of the agreement.

On January 12, 2012, the property owners received an email from a neighbour of the rental property which indicated that each time she walked by the home she was noticing there were fewer trees and that on this date she had seen a number of lower branches of the trees that had been trimmed. The neighbour reported the house had lost a lot of its privacy. The owners stated they told the neighbour they would contact their property manager.

On January 14, 2012, the property owners received another email from the neighbour who supplied them with photographs of the cutting that had occurred. The neighbour reported that the tenant had gone back out to cut more trees after she had been on property taking photographs.

On January 15, 2012, at 7:29 a.m. the property manager received a telephone call from the property owners informing her that the neighbour of the rental property had contacted them to report that the tenant was clearing bushes and trees along the property; the owners were upset and wanted this activity to immediately cease.

Within the next 65 minutes the property manager reached the male tenant and told him that he must immediately cease cutting trees and not touch the yard until further notice. The tenant indicated that he understood.

At approximately 2 p.m. on the same day the property owners called to say that the tenant had continued to cut trees.

A 2:26 p.m. the property manager again called the tenant and left a message telling him to stop all cutting of any live plant or bush and to call immediately. Another message was left on the tenant's home phone at 3:05 p.m., asking the first person who heard the message to call the property manager.

At 5:20 p.m. the property manager reached the tenant at the home number and was told the tenant had only cut up branches that required hauling and he understood nothing else was to be cut.

On January 17, 2012, the property manager went to the rental unit property. She has cared for the rental for approximately 5 years and she was shocked by what she discovered. There were piles of freshly cut branches throughout the property; the house was now visible from the road and the privacy that had once been a valued part of the home had been destroyed.

The landlords supplied a copy of a February 10, 2012 email sent by their realtor. The realtor had gone to the property on January 13, 2012, to view it for possible sale assessment. The realtor had been to the property in the past and recalled its charming character and that property was very private. When he and his sales partner arrived at the property he was surprised he could see the home from the road and as he drove in the driveway he could see large piles of branches from the de-limbing of trees. He noted some trees had been de-limbed up to 9 feet from the ground. A plum tree had been pruned of all its branches, left as a trunk with 4 short stumps. The tenant told the realtor the property had been dark and was better now that the limbs had been removed.

After viewing the property, and the extensive cutting of trees that had occurred, the realtor estimated that the landlord's had suffered a loss of value of anywhere from \$40,000.00 to \$60,000.00.

The property manager stated that she and the tenant had discussed the removal of piles of brush that were on the property and that's she had intended to obtain an estimate for this work. They had also discussed trimming around power lines; however, no permission had been given to the tenant to cut any trees.

The landlord supplied a copy of a consulting arborist report issued on February 10 and 11, 2012. The arborist supplied a list of trees that had been damaged; which were accompanied by estimates for loss using 2 different methods. The arborist submitted that the loss of value was in the range of between \$25,000.00 and \$45,000.00; depending on whether the assessment included the loss of privacy and the length of time it would take replacement plants to grow in order to restore the original privacy.

The landlord stated that there were a few branches that could have been trimmed at the end of the driveway, in order to improve the sight-line to the road. A photograph showing the small areas that could have been removed, for safety reasons, was supplied.

Maps of the plantings on the property were supplied which outlined the areas that had been cut; which included mature cedars, arbutus, dogwood, a heritage plum tree, a pear and apple tree, a holly bush, Douglas fir, native species, a quince, rosemary and other perennials.

The tenant's disputed the Notice, based on 3 areas of disagreement: that they had been given a short period of time to vacate; that the Notice was based on the absence of permission and that they did not believe they had caused significant loss in value to the property.

The tenants testified that the property was over-grown and that they set out to improve the property by cutting the trees. The male tenant stated that he had talked with the landlord's agent about trimming the trees around the power lines; but he did not complete this work. The tenant stated the cutting of the trees and vegetation was completed for safety and security reasons.

The tenant acknowledged that he had cut the lower limbs on the mature trees as he believed he was improving the property. The tenant intended to trim back the vegetation in an attempt to allow sun to reach deeply shaded areas and the cedar trees and to give the property more light. The tenant had cleared along the property line in order to obtain access to clean garbage that was in the undergrowth.

The tenant completed the cutting of the trees with the best of intentions; and he thinks the vegetation will, to a great degree, re-grow. The tenant has received comments from people who indicated the landlords should be thankful for the work that was completed.

The tenants were never told that the landlord's valued the privacy supplied by the tree cover and when asked to cease cutting of the trees, they complied. The tenants believed they were enhancing the property rather than causing damage.

The tenant questioned the use of photographs taken during the summer months, as comparison to the areas he had cut in the winter months.

The tenants confirmed that permission was not sought from the landlord and that the trees were cut without the knowledge of the landlord's agent or the property owner. The tenant stated that the Notice was issued in relation to the trees at the front of the property and was not relevant to the ornamental trees such as the plum, apple, pear and holly.

The tenants submitted a February 9, 2012, report issued by a consulting arborist, who visited the property in order to establish whether the pruning formed extraordinary

damage to the tree resource. The report indicated that the level of work completed could have been done to address safety and security concerns by creating sightlines between the street, house entrances and parking area; clearance for hydro and communication lines and/or improvement of the stand characteristics by removing competing growth.

The report confirmed the removal of low tree limbs, rooted cedar limbs, smaller juvenile suppress trees and indicated that it did not appear to have been completed in an attempt to damage the property. The report confirmed that the density of the screening between the road and home did not damage “many of the other attributes that the trees contribute to the property” and that the health and structure of the trees was not negatively impacted. The consulting arborist determined that the understory plants will regenerate and gradually become denser between the street and house. The report concluded by determining that the tree resource was not damaged.

During the hearing the landlord requested an Order of possession.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenants caused extraordinary damage to the property.

I have considered the definition of “extraordinary” provided in *Black’s Law Dictionary, sixth edition*, which states, in part:

“out of the ordinary; exceeding the usual; average, or normal measure or degree...remarkable; uncommon; rare; employed for exceptional purpose...”

I considered the photographs which showed what I find to be a dramatic and remarkable alteration made to the landlord’s rural property. A home that was once hardly visible from the road is now clearly seen from the road. I find that the level of cutting and removal of limbs from mature evergreens was significant and well beyond what might have been required to allow an improved sight-line to the road from the end of the driveway. While the tree resource damage may not be extraordinary, and I have made no finding in relation to this, the overall damage and loss to the property owners through the changed character of the property was beyond any measure of reasonable.

The tenants did not seek permission to undertake such a significant alteration of the property; even though they had signed an agreement which prohibited moving even a plant; a term that I find clearly communicated to the tenants the value placed on the aesthetic value of the property by the owners. I found the tenant’s submission that they had not understood how important the private nature of the home was to the owners rather puzzling. The tenants have acknowledged they completed significant alteration to the property, in the absence of permission, yet failed to anticipate the outcome of their actions.

I find it was highly unreasonable of the tenants to have made such extraordinary change to the property, in the absence of any discussion with the property owner's agent. Even when the issue of limbs around power lines was raised, the agent had said she would obtain instructions from the owners; at no time were the tenants given permission to alter any tree on the property and, in fact the tenant never did cut the limbs around the power lines.

Conclusion

I find that the landlord's have submitted sufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the Act.

The tenant's application is dismissed.

The landlord has been granted an Order of possession that is effective February 29, 2012, at 1 p.m. This Order may be served on the tenants, filed with the Supreme Court of British Columbia 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: February 22, 2012.

Residential Tenancy Branch