



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF / MND, MNDC, MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the tenant for a monetary order as compensation for the cost of emergency repairs / compensation for damage or loss under the Act, Regulation or tenancy agreement / return of the security deposit / and recovery of the filing fee; ii) by the landlord for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the year-long fixed term of tenancy began on September 15, 2010. Monthly rent of \$2,200.00 was due and payable in advance on the first day of each month, and a security deposit of \$1,100.00 was collected. A move-in condition inspection report was not completed.

Following the end of the fixed term, monthly rent was increased to \$2,250.00 and the tenancy continued until April 30, 2012. A move-out condition inspection report was not completed.

While there are numerous aspects of the dispute, the main issue in dispute concerns pruning by the tenant (and/or her friend) of a "Fatsia japonica" or "Japanese aralia" (the "tree") located on the property. There is conflicting testimony related to whether or not the tenant specifically requested permission to prune the tree and, if she did, whether the landlord's father, acting as the landlord's agent, gave consent for the pruning. In

any event, whatever the conversations or understandings, the landlord considers that as a result of the pruning the tree sustained damage sufficient to warrant compensation. Both parties undertook to have assessments made of the tree by certified arborists, and the two resulting reports were submitted in evidence.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and affirmed testimony, the various aspects of the respective claims and my findings are set out below.

LANDLORD

\$3,300.00: photos / property damage. There are no receipts in evidence to support any particular costs associated with photos. Accordingly, the application to recover costs for photos is hereby dismissed.

There is no evidence in either the professional assessment of the tree which was paid for by the landlord, or the one paid for by the tenant, which speaks of any damage to the tree in terms of specific dollars and cents. In short, the assessed value of damage reflects a purely subjective evaluation on the part of the landlord. The report paid for by the landlord states, in part, as follows:

I noticed that this specimen has been pruned in the recent past aggressively and incorrectly.

Since the specimen tree has been pruned improperly, and that it appears to be old, the long term health and vigor of the aged specimen is unclear. There is adequate new growth to currently sustain the specimen, however, the natural characteristics and vigor of an old specimen is difficult to correct and improve.

The report paid for by the tenant states, in part, as follows:

It was noted that there were old wounds on the main stems typical of large pruning cuts being historically removed close to the base of the tree.

In our opinion the shrub was already in a poor condition due to the growing site constraints and the history of poor pruning practices. The recent pruning has

caused no significant changes to the value and viability of the shrub. Further, due to the pre-existing poor condition and the related limited life of this shrub, I do not expect this shrub to have suffered any decrease in its appraised value in comparison as a result of the recent pruning.

In summary, there was conflicting testimony in regard to whether permission for the recent pruning was ever sought and/or whether it was ever obtained. However, I find that pruning undertaken by the tenant (and/or her friend) contributed at the very least to the tree's diminished aesthetic appearance, if not its lifespan. Further, I find on a balance of probabilities that the recent pruning had a negative impact on the intrinsic and sentimental value of the tree for the landlord. Accordingly, I find that the landlord has established entitlement to a claim in the limited amount of **\$350.00**.

\$125.00: *tree assessment report*. I find that the landlord has established entitlement to a claim in the limited amount of **\$62.50**, which is ½ the amount sought.

Total entitlement: \$412.50*

TENANT

\$360.00: *mowing the lawn*; **\$60.00: *removal of old dryer & installation of replacement dryer***; **\$60.00: *turning on gas furnace & fireplace***. I find that there is insufficient evidence to support any of these aspects of the claim. Specifically, documentary evidence does not include any related written agreements entered into by the parties during the tenancy, or related documentary exchanges (including e-mails) between the parties during the tenancy, or any receipts. Accordingly, these aspects of the claim are hereby dismissed.

\$392.00: *tree assessment report*. I find that the tenant has established entitlement to a claim in the limited amount of **\$196.00**, which is ½ the amount sought.

Total entitlement: \$196.00*

As neither party succeeded fully in their respective applications, both applications to recover the filing fee are hereby dismissed.

Offsetting the respective entitlements, I find that the landlord has established a net entitlement of **\$216.50** (\$412.50 - \$196.00). I hereby order that the landlord may

withhold this amount from the security deposit of \$1,100.00, and I order the landlord to repay the balance owed to the tenant in the amount of \$883.50 (\$1,100.00 - \$216.50).

Conclusion

Pursuant to section 67 of the Act I hereby issue a **monetary order** in favour of the tenant in the amount of **\$883.50**. Should it be necessary, this order may be served on the landlord, filed in the 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: June 28, 2012.

Residential Tenancy Branch