



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TIMBERLAND PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, MNDC

Introduction

This hearing dealt with the tenant's request for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; and, Orders for the landlord to make emergency repairs. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is it necessary to issue Orders to the landlord to make emergency repairs?
2. Is the tenant entitled to compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenant has been occupying the subject manufactured home site since December 2003. The manufactured home park is heavy treed with the majority of the trees existed before the tenant's manufactured home was situated in the park. In particular, there are two large fir trees located approximately 9 and 11 feet from the tenant's manufactured home (herein referred to as the subject trees) that are the subject of this dispute.

Following extreme weather and/or wind conditions in November 2011, March 2012 and December 2012 the tenant has suffered damage to her manufactured home and her vehicle from branches falling from the trees in the manufactured home park.

The tenant seeks an Order for the landlord to either:

1. Remove the subject trees entirely; or
2. Have the trees assessed by two certified utility arborists and the ivy removed from the trees.

In addition, the tenant seeks compensation related to the tree branches that damaged her manufactured home and vehicle, as follows:

Insurance deductible on vehicle repair	\$ 300.00
Repairs to manufactured home roof	245.28
Increase in future insurance premiums (\$100.00 x 5 yrs)	<u>500.00</u>
Total claim	\$1,045.28

The tenant submitted that in the past she had verbally requested the landlord address the subject trees and the landlord's response has been that she was "on the list" for limb removal. However, until late February 2013 no limb removal had been performed.

Further, the tenant and other tenants have written letters to the landlord requesting the landlord deal with dangerous trees and the landlord has not responded to them with respect to their concerns.

After a tree limb pierced the roof and soffit of the manufactured home the tenant has feared for her safety. The tenant is of belief the subject trees are not healthy due to their appearance and heavy growth of ivy on the trees.

The landlord submitted that every year the landlord has the property inspected for dangerous trees and takes action where necessary. The landlord emphasized that the property is heavily treed and the setting forms part of the natural character of park. The subject trees existed prior to the manufactured home being placed on the site. The landlord cannot control the extreme weather/wind conditions that happen from time to time in the area. Nor does the landlord remove healthy trees and may even be precluded from doing so under tree by-laws. Further, an arborist drilled a core sample from one of the subject trees and verbally advised the landlord that the core sample indicated the tree was healthy.

With respect to communication with tenants, the landlord submitted that there are hundreds of tenants located on various properties owned by the landlord and it is prohibitive to communicate with every tenant in writing about the landlord's activities. Rather, tenants are encouraged to communicate with their respective park managers.

Analysis

I find the evidence before me, and especially the lack of evidence from a qualified tree expert, insufficient to conclude the subject trees are unhealthy or otherwise pose a danger beyond that of any tree or that the subject trees need to be removed. However,

given the close proximity of the subject trees to the tenant's home, the large volume of ivy growth on the subject trees, and the number of insurance claims the tenant has made with respect to tree branches falling and damaging her property, I find it necessary and appropriate to impose the following ORDERS upon the landlord:

1. Have a certified arborist inspect both of the subject trees and prepare a written report that includes an assessment of:
 - The overall health of the trees;
 - Whether any limbs or portions of the trees are at increased risk of falling off the tree;
 - The impact of the ivy growth on the trees currently and in the future if the ivy is left in place;
 - Whether the trees are too close to the manufactured home pursuant to any applicable laws governing such matters.
2. Give a copy of the arborist's written report to the tenant.
3. Follow any and all recommendations of the certified arborist and comply with any laws governing the proximity of the trees and the manufactured home.

The above ORDERS are to be fulfilled within one month of the date of this decision.

As an alternative to the above orders, the landlord is at liberty to remove the subject trees if within the landlord's legal right to do so.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

In this case, the tenant bears the burden to prove the landlord was either negligent in the duty of care owed to the tenant or the landlord violated the Act, regulations or tenancy agreement with respect to the subject trees. Section 26 of the Act provides for the landlord's statutory duty under the Act to repair and maintain. It states:

26 (1) A landlord must

- (a) provide and maintain the manufactured home park in a reasonable state of repair, and
- (b) comply with housing, health and safety standards required by law

[my emphasis added]

In the absence of any housing, health or safety law being presented to me I find insufficient evidence the landlord is in violation of such laws or section 26(1)(b) of the Act. Therefore, I proceed to consider whether the tenant has established that the landlord failed to reasonably maintain the park, insofar as it relates to the subject trees, or has been otherwise negligent in the duty of care owed to the tenant.

While any obviously dangerous trees are to be removed or limbed by the landlord, I find it unreasonable that the landlord is expected to anticipate or prevent the falling of every tree or limb especially in naturally heavily wooded areas. Rather, the landlord's obligation under the law of negligence is to do what a reasonable person would do in the given circumstances. I heard undisputed evidence that the tree branches that have fallen on the tenant's property followed extreme weather or wind conditions. I note that one of the insurance reports also indicates the tenant's loss was due to wind. I find the falling of tree branches in extreme weather or wind conditions insufficient to conclude the landlord has been negligent or failed to reasonably maintain the trees as opposed to the result of a natural occurring weather event beyond the landlord's control.

The tenant in this case has chosen to rent a manufactured home site in a heavily treed manufactured home park located on the west coast of the Province where rain and wind storms are not uncommon. I find that a reasonable person would expect to accept at least some risk associated with that decision and for the most part the tenant's losses have been covered by insurance.

Based upon the above, I dismiss the tenant's monetary claims against the landlord; however, should the landlord fail to fulfill the recommendations of the certified arborist, any future losses associated to these trees may be actionable against the landlord under the law of negligence.

Conclusion

The landlord has been given specific orders with respect to the two trees that are the subject of this dispute. The tenant's monetary claims have been dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: April 12, 2013

Residential Tenancy Branch

