



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP RP

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Manufactured Home Park Tenancy Act* (the "Act"). The tenant applied for an order directing the landlord to make emergency repairs for health or safety reasons and to make repairs to the unit, site or property.

The tenant attended the hearing. The tenant gave affirmed testimony and was provided the opportunity to present any documentary evidence that was the submitted in accordance with the Rules of Procedure.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The tenant testified that he served the landlord by registered mail with the Notice of Hearing and his evidence. I accept that the landlord was aware of the hearing scheduled for this date and time as the landlord submitted evidence to the Residential Tenancy Branch. The landlord's evidence was submitted late and was therefore excluded from the hearing as the landlord's evidence was not submitted in accordance with the Rules of Procedure. The hearing continued without the respondent landlord present.

Issue to be Decided

- Did the tenant provide sufficient evidence to support that the landlord should be ordered under the *Act* to make either an emergency repair or repair to the unit, site or property?

Background and Evidence

The tenant testified that a month to month tenancy began on or about November 1, 2008. Currently, monthly site rent of \$297.00 is due on the first day of each month. The tenant has applied for an order directing the landlord to remove a large tree from the rental site. The tenant described the large tree as a Douglas Fir, approximately 75

feet tall. The tenant testified that the tree leans approximately eight feet from the base towards his manufactured home on the rental site and is a concern for his safety and the safety of others in the Manufactured Home Park. The tenant indicated in his evidence that the large Douglas fir tree borders between the tenant's site 202, and the neighbouring site, 201.

The tenant provided photographs, a drawing, and other evidence including an October 1, 2013 letter from the Park Manager, PC, which reads in part:

"...We invite you to have a qualified arborist inspect the tree and produce a written report, at your cost. In the event that the qualified arborist deems the tree, to be unhealthy, or a particular safety risk, I will, (along with consultation with the owners), explore available options up to and including trimming branches, or as a last resort, removal of the tree..."

[reproduced as written]

The tenant arranged for a certified arborist to attend at a cost to the tenant of \$150.00, and submitted in evidence a letter from FBF, a Certified Arborist dated October 9, 2013. In the October 9, 2013 letter from the Certified Arborist, the Arborist confirms that a Douglas Fir was examined and that "while some sign of rot was detected, I did not increment bore or drill the tree as there was enough external indicators to deem the tree to hazardous." The Arborist writes:

"...This tree has long horizontal branches, stem indentations indicating internal cracks and co-dominant tops which will inevitably fail. Given its maturity and the size and weight of the weakly attached branches and co-dominant tops; I deem this tree to be hazardous and recommend removal as soon as possible; particularly considering the approaching storm season. The hazard indicators within this tree canopy are not flaws that can be mitigated by normal arboricultural practices.

The choices with such a tree are either to bring it down in a safe, controlled manner, or have it fail in a sudden and catastrophic manner. This tree is unlikely to fail at the base; however the hazardous pieces in the crown that present a potential for imminent failure are large and heavy and pose a risk of causing severe damage when they fail.

Controlled removal by a qualified contractor is recommended."

[reproduced as written]

The tenant also provided evidence to support that the landlord was sent a copy of the October 9, 2013 report as described above. The tenant described that the tree creaks

and is frightful which causes the tenant much concern. The tenant stated that his neighbours are also concerned about this tree and support that the tree be removed.

The tenant testified that the landlord has referred to the Park Rules previously, which were submitted in evidence and to which 1(a) of the Park Rules reads:

“Landscaping and Fencing: Any fencing, plants, shrubs, trees that are present now or are added in the future are and remain the responsibility of the Tenant and must be maintained by the Tenant at the Tenant’s cost, in good condition. Removing or adding to the fencing, shrubs, and trees on the site requires the prior written permission of the Landlord...”

[reproduced as written]

Analysis

Based on the above, the undisputed testimony of the tenant and the tenant’s documentary evidence, and on a balance of probabilities, I find as follows.

I find that the letter submitted from the Certified Arborist dated October 9, 2013 is sufficient evidence that the large tree which borders between the tenant’s site, 202, and the neighbouring site, 201, should be removed as it is hazardous.

I find that the landlord and tenant may not contract outside of the *Act* by agreeing that a large 75 foot Douglas Fir tree is the responsibility of the tenant by reference of 1(a) of the Park Rules described above. **I find** that Park Rule 1(a) applies to much smaller trees that were planted by the tenant or small trees, shrubs and fencing. I find it reasonable that the large Douglas Fir tree in the matter before me existed prior to the park being created, and most certainly existed prior to the tenancy start date. As a result, **I ORDER** that the large Douglas Fir tree located between site 202 and 201 be removed and that the removal of the tree is the sole cost and responsibility of the landlord.

Based on the above, **I ORDER** the landlord to arrange to have a qualified contractor safety remove the large Douglas Fir tree between sites 202 and 201 in a controlled manner **on or before January 15, 2014 at 1:00 p.m.**, and that all costs be paid by the landlord.

Now that the landlord is aware of this hazard and my Order, the landlord is cautioned that the landlord may be liable for gross negligence should the tenant’s site or any other

site in the Manufactured Home Park be damaged as a result of failing to comply with my Order.

As the tenant's application had merit, **I grant** the tenant the recovery of his filing fee in the amount of **\$50.00**. **I ORDER** the tenant to deduct \$50.00 from a future month's rent on a one-time basis in full satisfaction of the recovery of the \$50.00 described above.

Conclusion

The landlord has been ordered to remove the large Douglas Fir tree located between sites 202 and 201 on or before January 15, 2014 by 1:00 p.m. in a controlled manner by a qualified contractor at the sole cost and responsibility of the landlord.

The tenant has been ordered to deduct \$50.00 from a future month's rent on a one-time basis in full satisfaction of the recovery of the tenant's filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 17, 2013

Residential Tenancy Branch

