



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOCKE PROPERTY MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the unit, site or property.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to monetary compensation for damages?

Background and Evidence

The tenancy began on March 12, 2012. Rent in the amount of \$752.00 was payable on the first of each month. A security deposit of \$362.50 was paid by the tenant. The tenancy is still in effect.

The landlord claims as follows:

a.	Cost of fence	\$1,463.86
b.	Filing fee	\$ 50.00
	Total claimed	\$1,513.86

The landlord's agent testified that in February 2013, the tenant requested permission to install a garden between the tenant's patio and the property line. The agent stated that they gave the tenant permission to make the garden.

The landlord's agent testified that unfortunately the tenant in the process of making his garden removed shrubs that were on the neighbouring property and this caused the neighbour a loss of privacy and the neighbour requested a fence to be installed. Filed in evidence are photographs of the fence.

The tenant testified that he was given permission in February 2013, to install the garden and it was not until March 2013, that the landlord surveyed the property line and it was discovered at that time that he had gone onto the neighbouring property by 5 to 7 feet.

The tenant testified that the shrubs that he had permission to remove from the landlord's property were lilac bushes. The tenant stated that he pruned and transplanted those lilac bushes on to the neighbour's property and that the lilac bushes would have made a sufficient barrier once they started to grow. The tenant stated the landlord's photograph supports the lilac bushes are now starting to show new growth.

The tenant testified that he and his father had offered to build the neighbour a fence to resolve any dispute, but the landlord refused to allow them to build the fence.

The witness for the tenant testified that his son cleared away a lot of dead vines that were likely a fire hazard. The witness stated he saw his son remove the lilac shrubs from the landlord's property and replanted those shrubs on the neighbour's property and in fact helped him plant one of them.

The landlord's agent agreed that the tenant was not allowed to build a fence as they believed the work would be substandard.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The parties agreed that the tenant had permission to remove all the shrubs from the landlord property up to the landlord's property line. However, during the removal of shrubs the tenant trespassed on the neighboring property removing some of the shrubbery, this caused the neighbour to lose some privacy and as a result the landlord installed a fence at the neighbour's request.

In this case, I find the landlord has failed to prove the tenant has violated the Act, or the tenancy agreement as there was no damage caused to the rental unit, site or the landlord's property as the incident occurred on the neighbour's property.

Even if I accepted that the landlord's neighbour suffered a loss of privacy, I find the lilac bushes likely would have been sufficient to address the privacy loss if given sufficient time to grow as the photographs support new growth was already starting to show.

Further, even if I accept the landlord suffered a loss, which I do not, as the landlord choose to install the 24 foot x 6 feet wood fence. Under the 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

I find that building the fence was unreasonable when expecting the tenant to paid for the cost. The fence is a large improvement to both the landlord's and the neighbour's property and cost likely far exceeds the value of the overgrown shrubs that were on the neighbour's property as they likely had little or no value based on the photographs.

Further, even if I accept the tenant caused damage to the landlord's property, which I do not, under section 32 of the Act, the tenant had the right to make the repair. Although the tenant offered to build a fence for the neighbour to resolve the dispute, the landlord rejected that offer as they felt any work completed would be substandard to their expectations. he actions of the landlord deprived the tenant of their rights under the Act.

In light of the above, I dismiss the landlord's application without leave to reapply and the landlord is not entitled to recover the cost of the filing fee.

Conclusion

The landlord's application is dismissed 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: April 23, 2014

Residential Tenancy Branch

