



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding B & D STINN ENTERPRISES LTD dba LAKEPOINTE MANUFACTURED  
HOME COMMUNITY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      O F F

### Preliminary Issues

The parties confirmed the respondent named on the Tenant's application was a principal of the limited company who is the corporate Landlord. Accordingly, the style of cause was amended to include the corporate Landlord's name, in accordance with section 64 (3)(c) of the *Act*.

At the outset of this proceeding the Landlord stated that the rental property was a manufactured home park located on "reserve land". Upon further clarification the Landlord retracted his statement and advised that the corporate Landlord had entered into a 49 year lease to lease 25 acres of Crown Land to operate this manufactured home park. He argued that this was not First Nation's Reserve Land and he is not of First Nation's decent. He also noted that the *Manufactured Home Park Tenancy Act* has had jurisdiction in past cases.

After consideration of the foregoing clarification, and as neither party disputed jurisdiction under the *Manufactured Home Park Tenancy Act*, I accepted jurisdiction and proceeded to hear the merits of this application.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 15, 2014, by the Tenant for reasons relating to a matter pertaining to presence of a willow tree and to recover the cost of the filing fee from the Landlord for this application.

The Tenants were represented by Tenant S.D. who affirmed that she was at the hearing to represent both Tenants. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa.

The parties appeared at the scheduled teleconference hearing, gave affirmed testimony, and confirmed receipt of evidence served by the other. The Tenant argued that on July 8, 2014, the Landlord personally served their evidence, which was too late. Therefore, she does not want the Landlord's evidence considered. She also noted that the evidence was not relevant to her dispute.

Section 4.5(a) of the *Residential Tenancy Branch Rules of Procedure* provides that all evidence must be received by the *Residential Tenancy Branch* and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined in the Definitions part of the *Rules of Procedure*.

Considering evidence that has not been received by the *Residential Tenancy Branch* or served on the other party in accordance with the *Residential Tenancy Branch Rules of Procedure* would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Landlord has not served their evidence in accordance with the *Residential Tenancy Branch Rules of Procedure* I find that pursuant to section 11.5 of the *Residential Tenancy Branch Rules of Procedure*, the Landlord's evidence will not be considered in my decision. I did however consider the Landlord's testimony.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

Does the Landlord have the authority to order the willow tree be removed from the Tenants manufactured home park site?

#### Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month manufactured home park tenancy that began on approximately November 1, 2005. Rent is payable on the first of each month in the amount of \$358.72.

The Tenant testified that on May 6, 2014, she received a registered letter from the Landlord instructing her to remove the six year old willow tree from her back yard. She argued that the reasons for removal continue to change and that she has been given the following three reasons why the tree must be removed: (1) concerns about the willow tree root system causing damage; (2) complaints received from the neighbors that the tree is causing a mess; and (3) concerns about the proximity of the tree to the building.

The Tenant referenced her documentary evidence and photographs and argued that based on her research her tree, which is a corkscrew willow, does not pose a threat of damage. She stated that there are several other trees in the park that could cause damage, such as the large birch trees.

The Tenant submitted that when they first moved into the park the Landlord gave them \$100.00 or \$150.00 to purchase and plant trees. They planted three trees, two in the front and the one willow tree in the back. She argued that because the Landlord gave them the money to purchase the trees they obviously had the Landlord's permission to plant the willow tree.

The Tenant stated that she believes she has been told to cut this tree down because the Landlord's father lives next door and does not like having to clean up from the tree. She stated that the tree is a messy tree but that they keep it trimmed back to reduce the amount of mess. She argued that she has to clean up rose peddles that blow onto her yard from neighbor's rose bushes.

The Landlord testified that the Park Committee Rules section "D" provides that the Tenants are not to make alterations to the landscaping without written consent from the Landlord. He argued that the Tenants were never provided written consent to plant a willow tree in their back yard. The Landlord submitted that he did not know the tree was there until last fall and he seen it over top of the Tenant's manufactured home. He argued that he does not go into the Tenants' back yards unless there is a concern, so he had no idea they had planted a willow tree six years ago.

The Landlord argued that all willow trees are known for causing problems because of their root systems. He is concerned that if this tree is allowed to continue to grow in its current location that it may cause excessive damage. He stated that although there is no evidence of damage yet, he is concerned that if the willow tree is left to grow, the damage will be so severe that the Tenants will not want to deal with the issue. The tree

is already hanging over into neighbors' yards and causing a mess. He said they are thinking of the future and argued that the tree will be easier to remove at its current size.

The Landlord confirmed that they had a marketing program where they gave tenants approximately \$125.00 to plant trees to help establish the park. He did not recall if the tenants were given written instructions about the type of trees they were allowed to plant but argued that they have now decided that they do not want willow trees in their park. They have made another tenant cut down his willow tree which supports this decision.

In closing, the Tenant summarized that: they had approval to plant the tree because the Landlord gave them the money to purchase it; there are way bigger trees in the park; they cut the tree back every year; their tree is a corkscrew willow which is not invasive; and they do not want to lose this tree because it provides them shade.

### Analysis

Section 26(1) of the Act stipulates that a landlord must provide and maintain the manufactured home park in a reasonable state of repair, and comply with housing, health and safety standards required by law.

The *Residential Tenancy Policy Guideline #1* provides that a fixture is defined as a thing which, although may originally be a movable chattel, is by reason of its annexation to, or association in use with land, regarded as a part of the land.

Based on the above definition, I find that a tree planted in the ground and left to grow over a period of several years meets the definition of a fixture.

The *Residential Tenancy Policy Guideline #1* section 10 provides that where a fixture is placed on the premises or property by the tenant, at the request of the landlord, the landlord may be held responsible for its repair and maintenance.

In this case the undisputed evidence provides that the Landlord provided the Tenants with approximately \$150.00 to purchase trees which were to be planted on their manufactured home park site. Therefore, in the absence of any proof that restricted the type of trees that could be planted, I accept the Tenants' submission that the Landlord not only gave them permission to plant the willow tree in their back yard, the Landlord paid for it, and requested that the tree(s) be planted.

Based on the foregoing, I find that in this case the willow tree, that is currently located in the Tenants' backyard, is now a fixture of the manufactured home park site for which the Landlord is responsible to repair and maintain. Furthermore, I find that because the Landlord requested that trees be planted and paid to purchase the trees, the willow tree has become the Landlord's property to manage or remove, as the Landlord sees fit. That being said, if the Landlord chooses to remove the willow tree, then the Landlord is obligated to replace the willow tree with another tree of similar characteristics.

As I have found the willow tree to be a fixture and the Landlord's property, I hereby dismiss the Tenants' application to prevent the removal of the willow tree located on their manufactured home park site.

The Tenants have not succeeded with their application; therefore, I decline to award recovery of the filing fee.

#### Conclusion

I HEREBY DISMISS the Tenants' application, 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 *Manufactured Home Park Tenancy Act*.

Dated: July 25, 2014

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Residential Tenancy Branch

