



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

RP ERP FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on April 21, 2017 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- An order requiring the Landlord to make emergency repairs for health or safety reasons;
- An order that the Landlord make repairs to the unit, site or property; and
- An order granting recovery of the filing fee.

The Tenants attended the hearing on their own behalves. The Landlord was represented at the hearing by H.H. The Landlord also called an arborist, R.H., to provide evidence. Also present on behalf of the Landlord were J.H. and D.S., although they did not present evidence. All parties giving oral testimony provided a solemn affirmation.

The Tenants testified the Application package was served on the Landlord by registered mail on April 26, 2017. On behalf of the Landlord, H.H. confirmed receipt of the Tenants' Application package on that date. According to H.H., the documentary evidence submitted by the Landlord in response to the Tenants' Application was served by registered mail on May 23, 2017. The Tenants acknowledged receipt.

No further issues were raised with respect to service or receipt of the above documents. The parties were provided an opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Issues

1. Are the Tenants entitled to an order requiring the Landlord to make emergency repairs for health or safety reasons?
2. Are the Tenants entitled to an order that the Landlord make repairs to the unit, site or property?

3. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

Documents concerning the tenancy were submitted into evidence by the Landlord. These confirmed the tenancy began on or about May 6, 2014. The Tenants testified they currently pay pad rent in the amount of \$497.00 per month, which is due on the first day of each month.

The Tenants applied for an order that the Landlord perform certain repairs on the rental property. Specifically, they requested an order that the Landlord remove a group of three trees growing in close proximity to their home, and that the Landlord excavate roots growing near and under their home.

The Tenants provided a number of examples in support of the Application. They submitted that the trees pose a risk to their safety and belongings. They testified that branches and snow have fallen from the trees onto their home and shed. The Tenants referred me to a photograph of a hole in their shed, which they indicated was caused by a falling branch. In written submissions, the Tenants stated: "We have been hit by snow, branches, pine needles from wind and snow storms." They also expressed concerns about the safety of service providers who attend the property, and questioned who would be liable in the event of an accident.

The Tenants also submitted with their documentary evidence photographic images of the property and trees. One group of images depicted what the Tenants testified were exposed sewer lines to demonstrate the location of roots around the property. The Tenants suggested this "trenching" of sewer lines was not an appropriate practice and raised concerns about the potential impact of the roots on the sewer lines, and who would be responsible in the event of an incident. The Tenants also suggested the "trenching" may have weakened the trees. There are also problems with pine needles blocking gutters.

The Tenants testified they have made a number of requests to the Landlord to address their concerns about falling branches and snow. Copies of six email messages, dated between December 20, 2016 and April 3, 2017, were submitted into evidence by the Tenants. They submitted that the Landlord has not adequately addressed their serious concerns.

The Tenants also submitted photographic images depicting the proximity of the trees to the Tenants' home, branches and pine needles on the ground, and overflowing gutters.

On behalf of the Landlord, H.H. testified that the whole community is surrounded by trees, and that the three trees in question were present when the Tenants moved into the rental unit. H.H. referred me to a photographic image, submitted with the Landlord's documentary evidence, depicting what appeared to be the entrance to the park. The Landlord described the park as "forested" and confirmed the Landlord retains an arborist to conduct an annual inspection of all trees in the park to assess health and to determine any risk posed. Depending on

recommendations, trees that pose a risk may be removed or pruned. H.H. testified that the Landlord trusts the arborist because they are the experts. She submitted that a person who chooses to live in a forested area accepts some risk.

R.H. is an arborist was called by the Landlord to provide testimony. He confirmed that the trees of concern to the Tenants are healthy and that the risk of a complete tree failure is low. However, to reduce the impact on the Tenants, the arborist pruned tree branches to prevent snow accumulation and minimize the risk of falling branches. R.H. also testified that while attempts are made to minimize the risks posed by trees, he would be unable to predict the weather, acknowledging that heavy snow and wind could increase the incidents of falling branches and pine needles. Further, R.H. testified the trees exist in a group and that it would not be possible to remove just one tree. In specific response to the Tenants' suggestion that "trenching" to run lines or cables is inappropriate, R.H. confirmed this is a common and accepted practice.

The Landlord also submitted excerpts from the arborist report relating to the trees of concern to the Tenants. Although the Landlord provided the Tenants with assurances that the trees did not pose a risk on several occasions, the Tenants were not provided with excerpts of the arborist report until March 7, 2017, at which time they were provided with a letter repeating the arborist's findings with respect to the three trees at issue. The Tenants have not received a full copy of the arborist's report.

The Tenants also sought to recover the filing fee paid to make the Application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 26 of the *Act* sets out the parties' obligations to repair and maintain rental property. It states:

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.*

[Reproduced as written.]

In this case, the Tenants claimed to be entitled to an order requiring the Landlord to remove trees and associated root systems they suggested pose a risk to their safety and property. Although I accept that snow and branches fall from the trees from time to time, I find there is insufficient evidence before me to conclude the Tenants are entitled to the relief sought.

Rather, after carefully considering the submissions and evidence of the parties, I find that the Landlord has and continues to adopt an annual system of inspection to identify trees that pose a safety risk to tenants, and that the Landlord's response to the Tenants' concerns has been reasonable in the circumstances. I was particularly influenced by the testimony of the arborist, R.H., who advised that the trees in dispute are healthy and pose a low risk of failure. R.H. also acknowledged that some falling branches and debris can be expected from even healthy trees, particularly in snowy and windy conditions.

In light of the above, the Tenants' Application is dismissed.

Conclusion

The Tenants' Application is 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: July 28, 2017

Residential Tenancy Branch