



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNSD, FF

Preliminary matter

This matter was originally heard on December 18, 2018 and was adjourned to this date due to service issues of the Tenants' evidence package. The Tenants' evidence package was not received by the Landlord or the Arbitrator for the first hearing. The Tenant said they had couriered the evidence package to the Landlord and the Tenants provided tracking information for the package. The Landlord said she did not receive the package. The Tenants also said they uploaded the package to the Residential Tenancy Branch website but there were difficulties in doing it. At the time the Tenant uploaded their evidence, the Residential Tenancy Branch's website was having some technical issues and it is very likely the Tenants' evidence package did not upload correctly. Consequently, the hearing was adjourned until today so that the Tenants could re-serve the Landlord and Residential Tenancy Branch.

Introduction

The application was made by the Landlord for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenants' security and pet deposits and to recover the filing fee for this proceeding.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by personal delivery on August 22, 2018. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there damages to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation for the damage and if so how much?
3. Are there other losses or damages and is the Landlord entitled to compensation?
4. Is the Landlord entitled to retain the Tenants' security and pet deposits?

Background and Evidence

This tenancy started on October 1, 2015 as a fixed term tenancy with an expiry date of September 30, 2016 and then continued as a month to month tenancy. Rent is \$1,890.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$850.00 and a pet deposit of \$500.00 at the start of the tenancy. A move in condition inspection report was completed on October 1, 2015.

The Landlord said the Tenants are responsible to maintain and care for the yard as indicated in the Tenancy Agreement's Maintenance Addendum. In the Addendum clause 3 (a) and (c) state the lawn and gardens are required to be watered. As well the Maintenance Addendum says in clause 3 (d) that the Tenants are to notify the Landlord immediately of any insect, rodent or plant disease. Further clause 4 of the Addendum says the tenants **must not** remove any plants or trees without the landlord's written permission. The Landlord said the Tenants did not adequately water the cedar hedge in the backyard and because of the lack of water the cedar trees died. The Landlord continued to say the Tenants did not inform her of any problems with the cedars until June 25, 2018 when the cedars were already dead and then the Tenants cut the trees down and removed them. The Landlord said she did not authorize the Tenants to cut the trees down. As well the Landlord said the Tenants damaged the bushes in the front yard. The Landlord said she has spent time coming to the rental unit and getting quotes to repair the damage so she is requesting that she be compensated for her time and expenses.

The Landlord continued to say that her application is for damage to the yard of the rental unit. The Landlord said she is applying for the following:

Compensation for smaller replacement trees	\$ 3,000.00
Compensations for 40 replacement trees	\$ 8,023.75
Stump removal	\$ 975.00
Delivery, planting and top soil	\$ 2,215.50
Gas expenses (Landlord)	\$ 185.00
Landlord labour (20 hours @ \$15.00/hour)	\$ 300.00
Filing fee for this application	<u>\$ 100.00</u>
TOTAL	<u>\$14,755.25</u>

The Landlord said that she has provided the tenancy agreement, the maintenance addendum, the move in condition inspection report dated October 1, 2015 as well as photographic evidence of the dead trees and poorly maintained yard and texts and emails to support her claims that the Tenants did not advise her that the trees were dying or in trouble. The Landlord continued to say the Tree Services Company agent said to her that he thought the trees died from lack of watering. The Landlord did not provide any written evidence supporting this statement. The Landlord said the yard of the rental unit is devastated and it will take years for it to come back to the condition that it was at the start of the tenancy. The move in condition report indicates the unit and the yard were in good condition at the start of the tenancy. The Landlord said the trees were health and in good condition. The Landlord submitted a photograph of the back yard from the real estate listed from 2013 to support her claim. The Landlord requested that she be compensated for her losses.

The Tenants said they submitted a photograph from the spring of 2016 that shows the trees were starting to turn brown and possibly starting to die. The female Tenant said that they watered the trees but the trees got browner as time went on. The Tenants also submitted a letter from the neighbor indicating more trees were dying in 2017 and all the trees were dead in 2018. The male Tenant said they did not like the irrigation system so they did not use it and watered the trees with the lawn sprinkler at the same time as they watered the lawn. The female Tenant continued to say with the watering restrictions in Kelowna they could only water every second day. Further the Tenants thought they had permission to cut the trees down as they were dead and the Landlord told them it was their responsibility to replace the trees. The Tenants got a quote to replace the cedars with 7 foot cedars at a cost of \$4,575.00 for the complete job.

The female tenant said she recalls the Landlord and the Landlord's sister in law came to the yard in March, 2016. The Tenant said the Landlord saw the browning of the cedar trees at that time. The Tenant said the Landlord did not tell the Tenants to do anything so the Tenants continued with what they were doing. The Tenants said their next message to the Landlord was in June 2018 and it included a video and photos of the trees. At this point the trees were dead and the Tenants didn't know what to do. After that the Tenants said they cut the trees down because they thought the trees were a fire hazard and they thought they were responsible for replacing the trees. The Tenants said they were overwhelmed with the situation and injured themselves while removing the trees. The Tenants said now they do not feel responsible for the cedar trees dying as they did water the trees and the Landlord did not come to the property to inspect the trees after they mentioned the trees were browning in the spring of 2016.

Further the Tenants said they are not responsible for the Landlord's cost and labour to come to the rental unit as that is a landlord's responsibility. The Tenant also said they did prune the front yard bushes, but they are alive and growing, so the Tenants do not agree with the Landlord's damage claim for the front yard bushes. .

The Landlord said she was not at the property in the spring of 2016 as the only time her sister in law was at the property was when the move in condition inspection report was completed on October 1, 2015. Further the Landlord disputes the Tenants' photograph from March 2016 as there is no date stamp on it. The Landlord said the Tenants did not tell her the trees were browning or dying until June 2018 when the trees were already dead.

The Tenants had no closing remarks.

The Landlord said in closing that she is moving into the rental unit in May 2019 and she is distressed because the yard is devastated and it will take years to bring it back to what it was. The Landlord said the Tenants did not water the cedar trees adequately and as a result the trees died. The Landlord said she is requesting to be compensated for her losses.

Analysis

For a monetary claim for damage or loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts or quotes and the applicant must show how they mitigated or minimized the loss.

The Landlord and Tenants do not dispute the trees died. The Landlord says it is because the Tenants did not water the trees adequately. The Landlord supports this with a comment made to her from the Tree Service Company agent who is alleged to have said to the Landlord that the trees died because of lack of water. In addition the Tenants said they did not use the irrigations system because they did not understand it.

The Tenants say that they watered the trees and the trees may have started dying in March 2016 as the trees were starting to brown in the photograph the Tenants say was taken in March 2016.

First there is no definitive proof provided establishing what caused the trees to die. On the balance of probabilities though, because the trees appear to have died over the period from spring 2016 to June 2018 it is possible the trees died from lack of watering. I accept that the Tenants did water the trees, but they did not use the irrigation system which was designed to water the trees. Consequently although the Tenant watered the trees it may not have been adequate for what the trees needed. Further it appears the Tenants and Landlord communicated by text message on other issues so it is odd that the Tenants did not mention the browning of the trees to the Landlord between March 2016 and June 2018. The Tenants submitted a letter from the neighbor who confirms the more trees were dying in 2017 and all the trees were dead in 2018. The Tenants were responsible to report damage or potential damage to the Landlord whenever it is noticed. There was no reporting that the trees were browning or were looking poorly

even though the neighbor's letter confirms this. On the balance of possibilities I find the Landlord's explanation that the trees died because of a lack of watering is more probable than any other cause. Consequently I find the Tenants are responsible for the cedar trees dying due to inadequate watering.

With regard to the Landlord's monetary claim the Landlord has relied on only one quote for the replacement of the trees. The Landlord's quote for tree purchases, stump removal and planting is \$11,213.75. The Tenants provided a second quote for the replacement of the cedar trees at \$4,575.00. The Landlord's quote is for 40 trees 8 to 10 foot tall and the Tenants' quote is for 28 trees 7 feet tall. The difference in number of trees is based on the distance between the trees when planted. The average replacement cost based on the Landlord's quote is \$280.35 per tree and the average cost per tree based on the Tenants quote it is \$163.40 per tree. Pursuant to section 7 (2) of the Act an applicant must try to mitigate or minimize the damage or loss; therefore I find the calculation for the cost of replacement trees is an average of the two quotes. The average is $(40 \text{ trees} + 28 \text{ trees} = 68 \text{ trees} / 2 = 34 \text{ trees at } \$280.35 + \$163.40 = \$443.75 / 2 = \$221.88)$ in an amount of $34 \text{ trees} \times \$221.88 = \$7,543.75$.

Policy guideline # 40 indicates a useful economic life for materials in a tenancy property. Landscaping has a useful life of 15 years, but my research is that cedar trees may live up to 30 years. Therefore, with regards to the Landlord's claim of \$3,000.00 for the difference in tree height of the existing and replanted trees; I find that the tree height difference is balanced off with the age of the trees or useful life of the trees. The Landlord said the trees were probably 10 plus years old therefore 1/3 of the trees life has been used up. The existing trees economic life is estimated at 20 years and the replanted trees economic life is 30 years. Consequently I dismiss the Landlord's request for compensation of \$3,000.00 for the difference in the height of the replacement trees and the previous trees due to the economic life of the trees.

Further the Landlord's claims for labour and gas expenses are the responsibility of any landlord to check on and service a rental property. I dismiss the Landlord's claim for labour of \$300.00 and gas expenses of \$185.00 as these are normal landlord expenses.

In addition the Landlord has claimed \$56.00 for a bush in the front yard. I accept the Tenant's testimony that the bush was pruned but is still alive and it is growing. I dismiss the Landlord's claim of \$56.00 for damage to the front yard bush.

As the Landlord has been partially successful in this matter, she is also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit and pet deposit in partial payment of the claims. The Landlord will receive a monetary order for the balance owing as following:

Replacement cost of cedar trees	\$7,543.75	
Filing fee for this application	<u>\$ 100.00</u>	
Subtotal		<u>\$7, 643.75</u>
Less		
Security deposit	\$ 850.00	
Pet deposit	<u>\$ 500.00</u>	
Subtotal		<u>\$1,350.00</u>
Balance owing		<u>\$6,293.75</u>

Conclusion

A Monetary Order in the amount of \$6,293.75 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: January 24, 2019

Residential Tenancy Branch