



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, PSF, RP, MNDCT

Introduction

This hearing convened as the Tenant's Application for Dispute Resolution, filed on March 5, 2019, wherein the Tenant requested an Order that the Landlord make repairs to the rental unit, provide services or facilities and to recover the filing fee. By amendment dated March 11, 2019 the Tenant also requested monetary compensation from the Landlord in the amount of \$750.00.

The hearing was conducted by teleconference at 11:00 a.m. on April 25, 2019.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Delivery of Decision and Order

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Preliminary Matter—Relief Sought by Tenant

The Tenant confirmed that she was moving from the rental unit on April 30, 2019 such that her request that the Landlord make repairs to the rental unit and provide services or facilities was no longer required.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord for loss of use of the back yard and loss of privacy?
2. Is the rent increase valid?
3. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that she rents a full house from the Landlord. The monthly rent was initially \$1,500.00.

The Tenant stated that she received a Notice of Rent Increase dated October 1, 2018 indicating that her rent was to increase by 4.0%; she confirmed that when the allowable rent increase was reduced in 2018, she was informed that her rent would only increase by the allowable 2.5% such that her rent was raised by \$37.50 more per month. The rent increase was to take effect January 1, 2019. The Tenant confirmed that she has paid \$1,537.50 since January 1, 2019. In the within action she sought return of the amounts paid pursuant to the increase on the basis of the loss of use of her back yard.

The Tenant testified that on December 20, 2018 16 large cedar trees fell in the back yard. These trees were part of a large cedar hedge which provided a significant amount of privacy.

The Tenant confirmed that the Landlord removed the trees three months later on March 18, 2019. The Tenant further confirmed that the fence was replaced a few weeks later.

The Tenant claimed that the fence on the other side of the house was taken away, by the neighbour, in August of 2018 and never replaced. She claimed that the neighbour removed the fence and promised to replace it, yet he never did.

The Tenant confirmed that she sought \$200.00 per month in monetary compensation for loss of use of the back yard and loss of privacy for the months January, February and March 2019 as well as \$100.00 per month for continued loss of privacy for the month of April 2019 due to the fact the new fence does not provide privacy; she testified (and provided photos to support this testimony) that as the fence is see through she now stares at a parking lot, the highway, a car dealership and a rental building.

The Tenant confirmed that she is moving out as of April 30, 2019 as she no longer wants to live in a house without a private back yard.

The Tenant also sought recovery of the filing fee.

In response to the Tenant's submissions and claim the Landlord stated that this was not his fault. He stated that the trees fell due to a massive windstorm on December 20, 2018. He further stated that they were not able to have anyone remove the trees due to the fact it was such a widespread windstorm and all tree removal companies were booked.

He also stated that due to the fact there is a stream behind where the hedge was located, the Landlord also had to obtain permission from the City to undertake the work as well as to seek authority from the provincial government under the *Riparian Areas Regulation*. He stated that he went to the City on January 18, 2019 and was given the go ahead. He then applied for the permit under the *Riparian Areas Regulation* and received permission from the government on March 14, 2019.

The Landlord stated the trees were removed as quickly as possible and on March 18, 2019. The Landlord further stated that the fence was rebuilt on March 23, 2019.

In terms of the Tenant's allegation that another fence was removed by the neighbour, Landlord confirmed that the fence was on the neighbour's property and when the home sold the new owners renovated and removed the fence. He confirmed that he did not remove the fence as it was not on his property.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

- 8** (1) Landlord's obligations:
- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
 - (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I find that the cedar hedge fell due a serious windstorm on December 20, 2018 in the community in which the rental unit was located. This windstorm resulted in at least one death, hundreds of thousands of people without power and significant and extensive property damage. This was clearly not the fault of either party.

I accept the Landlord's evidence that due to the widespread nature of the windstorm he had difficulty hiring people to remove the trees. The photos submitted by the parties confirm that these trees were of significant size and required the assistance of professionals to remove. I further accept the Landlord's evidence that he required both municipal and provincial permission to remove the trees due to the presence of a stream near the rental unit. In all the circumstances, I find that the Landlord complied with his obligations under the *Act* and the *Regulations* to maintain the rental property.

Although I find the Landlord was not at fault, I accept the Tenant's evidence that the tenancy was devalued due to the presence of large fallen trees in the backyard and lack of privacy. The photos submitted by the Tenant show the backyard was rendered inaccessible and unusable. The photos further confirm that the absence of the large cedar hedge significantly affected the privacy of the rental property.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment provides in part as follows:

“Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment...”

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.”

After careful consideration of the evidence, and the testimony of the parties, I find the tenancy was devalued due to the presence of fallen trees in the back yard and resulting loss of privacy. While this was due to “an act of God” and not anything the Landlord did or failed to do, I find the Tenant’s right to reasonable privacy and exclusive possession of the rental unit was negatively affected. I therefore award the Tenant monetary compensation pursuant to sections 62 and 65 of the *Act*.

The Tenant seeks compensation for the lack of use of the back yard in the amount of \$100.00 per month for the months January, February, and March 2019. I find this amount to be reasonable based on the complete lack of use of the back yard and I therefore award her the **\$300.00** claimed.

The Tenant also seeks \$100.00 per month for the months, January, February, March and April 2019 due to the absence of privacy due to the fallen cedar hedge. Again, based on the photos submitted and the Tenants testimony, I accept this significantly affected her enjoyment of the rental home (it is notable that the Tenant moved from the property on April 30, 2019 due to the lack of privacy). I therefore award the Tenant the **\$400.00** claimed. (I note that I award this amount without any consideration for the removal of the neighbour’s fence which I find was not a significant factor in terms of the loss of privacy.)

I dismiss the Tenant’s claim for return of the funds paid pursuant to the rental increase, pursuant to section 43(2) of the *Act*, as I find the Notice of Rent Increase complies with the *Act* and the *Regulations*.

As the Tenant has been substantially successful I award her recovery of the \$100.00 filing fee.

Conclusion

The Tenant is entitled to monetary compensation in the amount of **\$800.00** for the following:

\$100.00 per month for January, February and March 2019 due to loss of use of the backyard	\$300.00
\$100.00 per month for January, February, March and April 2019 due to loss of privacy	\$400.00
Recovery of the filing fee	\$100.00
TOTAL AWARDED	\$800.00

The Tenant is granted a Monetary Order in the amount of \$800.00. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: May 15, 2019

Residential Tenancy Branch