



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on January 18, 2021 seeking compensation for damage caused by the tenant to the property. Additionally, the landlord applied for reimbursement of the \$100 Application filing fee.

The matter proceeded by way of a hearing on May 21, 2021 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided both parties the opportunity to ask questions.

Both parties attended the hearing. Each confirmed they received the prepared documentary evidence of the other in advance of the hearing via email. On this basis, the hearing proceeded.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for damage to the property, pursuant to section 67 of the *Act*?
- Is the landlord entitled to reimbursement of the Application filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted a copy of the consecutive tenancy agreements between the parties for this hearing and spoke to the terms therein. That agreement shows both parties’ signatures on May 15, 2017, and then for a renewal on May 13, 2018. This was

for the tenancy that started on June 1, 2018 for a one-year fixed term, then renewed for the following year. The renewal agreement shows the rent amount of \$2,136 payable on the 1st of each month. The tenant paid a security deposit of \$925 and a pet damage deposit of \$925.

The tenancy ended through the landlord's giving a Two Month Notice to End Tenancy to the tenants in 2020. The final date of this tenancy was April 18, 2020.

The landlord brings this claim for compensation for damage in the amount of \$2,644. This is for when the tenants cut down a tree on the property without the landlord's permission. The landlord submits this was a 35-year-old tree, a Siberian elm.

The landlord submitted they first found out about the removal when they visited the tenants to further renew the tenancy agreement. The tenants told the landlord at that time that they city had instructed them to remove the tree because it was an invasive species. An affidavit from the landlord's daughter in the evidence attests to their witnessing this conversation with the tenants. According to this account, the tenants stated the neighbours must have complained about the tree, and that led to the instruction from the city.

After the tenants moved out, the landlord inquired with the city on tree removal policy as directed by the city. The city informed the landlord that the city does not require cutting of a tree on private property unless it is blocking a public service. When the landlord learned of this policy, conflicting with what they heard from the tenants, they retained an Arborist who made a report on the tree and its value.

The Arborist report appears in the landlord's evidence. The prevalent points are:

- the purpose of the report is to provide a valuation for one Siberian elm located at the property
- they did not witness the removal of the tree – findings are based on Google Earth images and the landlord's information
- they confirmed the tree was a Siberian elm through assessing the bark
- it provided screening, shade, and a habitat for birds
- the stump was "47 cm in diameter" – the tree was around 35 years of age
- queries with the City confirmed the City does not ask the public to remove Siberian elm trees from private property – the City does not manage invasive tree species on private property
- the formula is the *Functional Replacement Cost Trunk Formula Technique* – this makes the value \$2,196

The landlord's claim consists of this value of \$2,196 based on the assessment. Additionally, the cost of the arborist's assessment is \$233, for which the landlord provided an invoice. Additionally, the landlord paid \$215 for stump grinding.

The tenants presented that they spoke with the landlord in advance about this particular tree. They informed the landlord it was invasive, sprouted new shoots all over the yard area, and had a "horrible smell". The landlord at that discussion gave the tenants permission to cut the tree down. They presented an affidavit from their daughter attesting to this conversation that took place on May 15, 2018.

The tenants presented a jointly-signed statement wherein they stated:

- at that conversation, they pointed out to the landlord that the tree in question "pops up new shoots everywhere" -- - under the deck, behind the air/furnace unit outside, and beside the house
- they asked permission to cut the tree down and the landlord granted this – they would not have cut the tree down if the landlord said "no"
- they never informed the landlord it was based on instruction from the city
- in May 2019 they showed the landlord that the tree was then gone
- they took good care of the yard and made improvements during the tenancy – they are "not people who just go around cutting things down."

They presented pictures that show:

- a google map image showing the comparison in sizes between the Siberian elm in the neighbouring yard, and the tree of heaven
- photos showing the elm in the neighbours' yard and the Tree of Heaven before they cut it down, with many shoots surrounding it
- details of the two different trees, comparing leaf structure, foliage
- a picture of other shoots growing beside the house
- an image of a person in the tree as it was being cut down.

In the hearing, the tenants presented that the landlord did not mention anything about the tree cutting at the end of the tenancy, and they received their damage deposit back from the landlord. After this, the tenants filed a dispute resolution regarding the end of the tenancy; this is ostensibly the only reason the landlord is filing the monetary claim here. The tenants also pointed out closely the comparison between what they rely on as the tree in question – i.e., their Exhibit B showing the full tree standing – and the arborist's report.

In response, the landlord reiterated they never provided permission, and that conversation where they allegedly gave consent never took place. The landlord also pointed out a discrepancy in dates within one of the written statements presented by the landlord. The tenants acknowledged this date error in the affidavit.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

To apply these criteria to the situation at hand, I start by analyzing whether there was a breach of the *Act* or the tenancy agreement. This ties into the discussion had with the landlord about the idea of cutting the tree down. There is no record that the landlord took issue with the tree at the end of the tenancy. There was no record of a meeting at the end of the tenancy which normally would be encapsulated in a Condition Inspection Report. The landlord did not make a claim against the security deposit, and the record here is that the tenants received the full amount of the deposit refunded at the end of the tenancy. In sum, the landlord did not take up the issue directly with the tenants at the time of the tenancy.

Working backwards from this, I find the landlord was aware of the tree not being there anymore in May 2019. The landlord did present that the tenants informed them it was the city's instruction; however, the landlord did not present that this was an issue for them at that time. I find as fact they did not make further inquiries about the tree or the need for its removal at that time. This places into question the *practical value* of the tree, as a measure of its usefulness to the landlord or their appreciation of it.

Working backwards again, I find it more likely than not that the tenants had the discussion with the landlord about their idea for removing the tree prior to doing so. I

find this makes the landlord aware of the species of the tree and the need for its removal. Given that the landlord took no issue with its removal for the duration of the tenancy, I find the tenants credible that they had the discussion with the landlord upfront about the tree.

This necessarily ties into the tenants' identification of the tree as a species that was invasive, and indeed causing a unique problem on the property where it would randomly sprout elsewhere in the yard. The tenants presented sufficient evidence for my finding that the tree in question was not a Siberian elm. There is ample photo evidence to show the foliage unique to the tree of heaven, its location within the yard both when standing (exhibit B) and when being removed (picture 3). I give weight to the photo presented by the tenants to show the species was invasive where it had started sprouting against the side of the house (picture 1) – this shows the tenants were aware of its nature and potential to present maintenance difficulties going ahead. On this point I give more weight to the evidence of the tenants over that of the arborist's report. The tenants saw the tree of heaven as a living tree and proved this with photos.

I have more difficulty concluding that the tenants removed a tree for no reason. There is no evidence to show it was the source of complaint or obstructing anything in their other designs for the yard. By contrast, the tree of heaven species was sprouting all over the yard, and the source of this was the larger tree of heaven that was removed. I am satisfied the tenants approached the problem with requisite knowledge in place.

With this conclusion, I find there was no breach of the *Act* or the tenancy agreement with the tree removal. I find as fact the landlord took no issue with the tree removal as it became known to them; additionally, there was at no time an explicit instruction to the tenants to not remove the tree in question. I am not satisfied that a damage or loss here exists for the landlord.

I find the landlord did not establish the value for the said tree. The arborist noted they applied a *functional replacement cost formula*; however, this does not set a *practical* value on the tree as an enhancement to the property. The landlord did not establish their desire to replace the tree as an effort to restore the property to its previous state. I find the arborist applied an abstract formula to establish value.

Further, the landlord has not mitigated the damage or loss by bringing this claim some time after the end of the tenancy. I find the landlord is not intent on *replacing* the said tree. Normally the principle of damages is some measure to place the party suffering a damage or loss in the same position they would be in if that damage or loss had not

occurred. Given that the landlord did not make inquiry with the city or retain an arborist until after the tenancy had ended, I am uncertain if they wished to address this issue as soon as they became aware. This lends credence to the tenant's speculation that the landlord made this claim in retaliation for other issues surrounding the tenancy; however, that speculation does not carry my judgment here.

For these reasons, I make no award to the landlord for the claimed amount for the tree. This is based on the arborist's report; I make no award for the landlord's expense of the arborist's services.

The landlord also claimed for "stump grinding". They did not provide proof they engaged this service – there is no invoice or receipt to show when the work took place or the need for it.

Because the landlord was not successful in their claim, I make no award for the Application filing fee.

Conclusion

For the reasons above, the landlord's claim for monetary compensation for damages or other money owed is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 2, 2021

Residential Tenancy Branch