



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP FFT

Introduction

The tenant seeks an order that the landlord makes repairs pursuant to section 26(1) of the *Manufactured Home Park Tenancy Act* (the “Act”). In addition, the tenant seeks to recover the cost of the application filing fee under section 65 of the Act.

Issue

Whether the tenant is entitled to an order under section 26(1) of the Act.

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The particulars of the tenant’s application were described as follows (reproduced as written from the application):

As already provided a broken tree, that was promised to be attended to by the landlord, has yet to be attended to. This tree is resting on my neighbours roof and if it falls will not only damage her unit but could also fall in the direction of mine. It’s poses a danger to both persons and property.

The landlord’s agent testified that the issue was resolved back in October 2021 when a large, broken branch from a tree – the broken branch overhung the tenant’s site and home – was removed. However, the tenant’s position is that the issue has “only partially been resolved,” and that the tree itself must be removed. The landlord’s agent appeared surprised that the tenant was now seeking the removal of the tree.

The tenant testified that there continues to be loose branches, and that the majority of the tree overhangs the tenant's site. He further explained that there is never any maintenance done on the tree, that it is "in bad condition," the tree is in a state of disrepair, and that it is rotting inside. The tenant submitted that removing the tree would be preventative in nature, removing the risk of either further branches or the tree itself from toppling over onto his home.

It is important to note that the base, trunk, and root of the tree is in manufactured home site #3, while the tenant is in site #2.

The landlord's agent testified that landscaping and lawn maintenance is the tenant's responsibility, as per the tenancy agreement. And that it is the tenant in site 3 who is responsible for taking care of the tree and pruning and so forth. He noted that the branch was removed with the assistance of BC Hydro, who have a power line running adjacent to the tree. According to the landlord's agent he has contacted four of five different companies (arborists) to come and have a look at the tree, but nobody seems to have the time or availability to do this. Someone was supposed to show up last Friday but failed to do so.

The tenant then testified that a lot of people in the park have commented that the tree has got to go. He again noted that a number of branches overhangs the site and home. Apparently, the issue of this tree dates back to 2020. As for the tenant in site 3 on whose property the tree is rooted, she is an elderly hermit homebody with mental acuity issues. Given the mental state of the tenant the condition of the tree and its required maintenance have become problematic.

In summary, the tenant questioned how he (and other tenants) should "inherit the mismanagement" of tree maintenance for tree that predate the existence of the park. Further, he asked how it is the tenant's responsibility for maintaining trees.

Analysis

As a starting point, we must first turn to section 26(1) of the Act which states that:

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.

Where a landlord's responsibility ends and a tenant's responsibility begins in respect of specific aspects of maintenance, however, is set out in either a Residential Tenancy Policy Guideline, a tenancy agreement, or both.

As noted during the hearing, the Act itself makes no mention of who is responsible for tree pruning and so forth. [Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises](#), version dated January 2004, applies to tenancies under both the Act and the *Residential Tenancy Act*. Policy statement at section 5 on page 7 under the heading "Property Maintenance" states that "The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control." (Emphasis mine.)

Turning to the tenant's written tenancy agreement, on page 4 there is a section titled "9. Tenant's Property & Fixtures". Within this section it states that the tenant agrees to be responsible for the maintenance and upkeep of "Landscaping (trees, shrubs, lawns, gardens, etc.)".

In other words, leaving aside the rather problematic use of the vague adverb "etc.", the tenant is responsible for trees. However, what is missing in evidence is a copy of the tenancy agreement for the tenant in site #3. It can only be assumed – based on the landlord's agent's undisputed testimony – that the tenant in site #3 is responsible for the tree. It therefore follows, in the absence of evidence to the contrary, that any "repairs" that need to be made to the tree are the responsibility of the neighboring tenant, and not that of the landlord.

For these reasons, I am not persuaded by the evidence that the landlord is obligated to remove the tree or, for that matter, do anything further to the tree in terms of pruning or removing branches. As such, the tenant's application for an order under section 26(1) must be dismissed without leave to reapply, as must his claim to recover the filing fee.

It is not lost on me, however, that this tree and its large overhanging branches may pose a risk to the tenant and his home. The tenant in site #3 may find herself the subject of future legal action should the tree or its branches ever damage the tenant's property. Similarly, the landlord may find itself being a party to any such action should it later be found that the landlord was aware of the tree not being properly taken care of by the tenant in site #3 but failed to take any steps to enforce the terms of the tenancy agreement in respect of tree maintenance.

Conclusion

The tenant's application is dismissed.

This decision is made on authority delegated to me under section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: January 13, 2022

Residential Tenancy Branch