



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Frank Richards Jewellers dba Silver Star RV
Park and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP

Introduction

The Tenant filed an Application for Dispute Resolution on October 7, 2021 pursuant to s. 52 of the *Manufactured Home Park Tenancy Act* (the “Act”). The matter proceeded by way of a hearing pursuant to s. 67(2) on February 15, 2022. The Tenant seeks completion of repairs made to the site, where they have contacted the Landlord, but the work was not completed.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to present oral testimony during the hearing. Each party confirmed they received the prepared documentary evidence of the other well in advance of the hearing. There is one exception where the Tenant provided additional photos to the Residential Tenancy Branch the day prior to the hearing; these photos do not receive consideration because they were not provided in accordance with the *Residential Tenancy Branch Rules of Procedure*.

Issue to be Decided

Is the Tenant entitled to completion of repairs they previously requested, pursuant to s. 26 of the *Act*?

Background and Evidence

Each party agreed on the terms of the tenancy agreement in place. The Tenant pays a rent amount of \$450 per month. The tenancy started in 2003.

The Tenant submitted they inquired on the falling limbs from a tree on the property in October 2012. They referred to the “progressively dying tree” at that time, with a danger of injury present from falling limbs. They presented another letter from 2018 wherein they informed the Landlord another large branch had fallen.

On July 13, 2021 the Tenant advised the Landlord of “several limbs” that had fallen from high winds. They stated, “It will need to be removed as quickly as possible to prevent further damage within 48 hours.” They described this as a “potentially dangerous situation” where limbs could not be moved without causing injury and further damage to the property. They requested the Landlord arrange a time to view the damaged tree.

The Landlord replied on July 15 that they were looking into the issue. The Tenant then replied on July 17 to inquire on the Landlord’s plan of action.

In the hearing, the Tenant described that they contacted the Residential Tenancy Branch who advised them to provide a timeline for completion to the Landlord. This was the Tenant’s request for the 48-hour resolution on July 13. The Branch also advised the Tenant to not enter the backyard area if they felt it was a dangerous situation.

In the interim period, the Tenant contacted 3 different arborists who provided estimates on the job of tree removal. These are in the Tenant’s evidence. They described how the Landlord visited to the Tenant; however, the topic of discussion was only about the lease. They stated the Landlord did not communicate about an arborist visit or other steps toward removal of the limb and clean-up of the area.

The Tenant presented that the limb was removed from on top of the shed on October 18, 2021, without any notification to the Tenant. The Tenant simply came home that day to find the offending limb had been removed. The Tenant had no access to the yard area from the time of the limb falling to its removal in October. The dead branch was removed and cut into smaller pieces. These pieces remain on the property, posing a fire and/or pest hazard to the Tenant in their unit. Additionally, the falling limb caused damage to the roof of the backyard shed that remains to the present.

In their timeline, the Landlord described a “major windstorm” that caused damage to the park. They assessed damage and began cleanup “in order of priority while awaiting available arborist.” They were limited in available staff, as well as working on opening up prior closed spaces for emergency wildfire evacuees.

They described their visit on July 18 to the Tenant to discuss limb removal. In the hearing they noted they attended to the Tenant's unit with equipment and staff in tow. The Tenant would not allow access to the area. In their timeline they noted "The fallen tree limb was not at any time a danger to the tenants nor to the tenants' living quarters", and included their own pictures of the situation, noting no damage to the shed. The Landlord also called "multiple arborists" in the week of July 19.

The Landlord noted the tree limb was removed on October 13, 2021, and there was "no damage assessed." The Landlord provided their invoice of the work for that day, coming to \$2,262.75. This was 4 works for 5 hours, and 3 workers for 3 hours. In their written submission, the Landlord noted they had no access allowed by the Tenant; therefore, they "obtained a professional arborist to ensure no damage was caused to the tenants' non-compliant shed."

In their evidence the Landlord also included an invoice from 2020 for \$5,565, to show they hired professional tree services to maintain the trees on the property. Contemporaneous to the July storm incident, the Landlord showed their communication to other arborists in an attempt to retain other services at that time due to their usual arborist's unavailability. These efforts were undertaken with the knowledge that "none of the trees were a danger and were therefore not a priority."

The Landlord also presented that the Tenant did not have approval to erect the shed on the site. They provided an excerpt from the tenancy agreement showing this, in clause C) 1).

Analysis

The *Act* s. 26 sets out both parties' obligations with respect to repair and maintenance. The Landlord is responsible for ensuring that manufactured home sites and parks meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property.

Specifically, s. 26(5) provides that a landlord is not required to maintain or repair improvements made to a manufactured home site by a tenant, unless the obligation to do so is a term of their tenancy agreement.

The *Act* s. 55 states that I may "make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*".

The Tenant presented the need for tree limb removal in July 2021. I find the Landlord acknowledged the need for those repairs in a timely manner. The Landlord gave a fulsome account of their past attempts to address the issue and the efforts to remove the limbs in a timely manner. I find it more likely than not that the Landlord attended to the site to attend to the trees, and not undertake to discuss the matter of the lease as the Tenant alleges. I am satisfied from the Landlord's account that the matter of trees falling and posing hazards was an immediate issue to them throughout the manufactured home park at that time. I also consider that the Landlord was adjusting to other matters in the park with emergency evacuees arriving and seeking accommodation around that time. I find it unreasonable for the Tenant to demand limb removal within 48 hours as they initially posed to the Landlord on July 13.

The Landlord prioritized work in the area; I find it reasonable that they did so in the circumstances. This delayed the limb removal on the Tenant's own property until October. I find this was the "earliest possible date" and give weight to the Landlord's evidence that they made a full assessment of the situation and concluded that the fallen limb did not pose a hazard to the living accommodation of the Tenant. After this, they attempted to retain an arborist, and availability in the area hampered that process.

The Landlord completed tree limb removal after the Tenant's Application in October 2021. Because the work is complete, there is no obligation for the completion of the work, and I make no specific order for tree limb removal. In the hearing, the Landlord gave their assurance that the existing branches lying adjacent to the Tenant's back fence (which pose no hazard during winter months) will be removed in the spring. I accept the Landlord will undertake that duty in line with their s. 26 statutory obligation.

Regarding the Tenant's own backyard shed, the Tenant did not make a request for repair to the shed in their Application. I note the *Act* s. 26(5) is very clear in placing a limitation on the Landlord's duty to repair and maintain. I find the shed is outside the Landlord's responsibility, being an improvement made to the site by the Tenant. That may be a matter for the Tenant's own insurance to evaluate for reimbursement of costs to them.

Given that the work associated with the Tenant's Application has completed, I dismiss this Application, without leave to re-apply.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application, without leave to re-apply.

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: February 23, 2022

Residential Tenancy Branch