



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes RR, FFT

Introduction

On October 26, 2021, the Tenant made an Application for a Dispute Resolution Proceeding seeking a rent reduction pursuant to Section 58 of the *Manufactured Home Park Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 65 of the Act.

The Tenant attended the hearing, and B.S. attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, neither party could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, the parties were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that her Notice of Hearing package was served to the Landlord by email on or around October 27, 2021, and B.S. confirmed that the Landlord received this package. Based on this undisputed testimony, I am satisfied that the Tenant’s Notice of Hearing package has been duly served to the Landlord.

In addition, she stated that her evidence was served to the Landlord by email on May 16, 2022. B.S. confirmed that the Landlord received this evidence, but she was not sure how to proceed as it was served so late. Given that this Application was made nearly seven months prior to the hearing, it is not clear why the Tenant would have waited so long to serve this to the Landlord and submit it to the Residential Tenancy Branch for consideration. This appears to have been an intentional decision in an effort to prejudice the Landlord. As this evidence was served to the Landlord and submitted to the Residential Tenancy Branch late, contrary to the timeframe requirements of Rule 3.14 of

the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this Decision.

B.S. advised that the Landlord did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a rent reduction?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on or around October to November 2007, that rent was currently established at \$792.05 per month, and that it was due on the first day of each month. A copy of the signed tenancy agreement was not submitted as documentary evidence.

The Tenant advised that she is seeking a rent reduction of **\$582.75** for the cost of removal of a tree in the park. She stated that she asked B.S. verbally, “at least four years ago, to look at this tree because it was her belief that it was dead and posed a danger to the park. She submitted that B.S. asked her, in May 2021, to get an estimate to have the tree removed, and the Tenant submitted this estimate to her later that month. The Tenant testified that B.S. asked her when the removal date of the tree would be, and the Tenant told her that it would be on June 2, 2021. As the Tenant still had not received approval to remove the tree, she attempted to reach out to B.S.; however, the Tenant claimed that B.S. advised her to stop communicating as her efforts were considered harassment.

The Tenant confirmed that she did not have the Landlord’s written permission to remove the tree, and did so under the “assumption” that it was acceptable to do as a way to protect the park. She claimed that the estimate that she received from the tree removal company included a report confirming that the tree had been dead, for approximately

four years, due to a virus. However, a copy of this report was never provided as documentary evidence.

B.S. advised that she informed the Tenant that owner approval would be required before the tree could be removed. She denied ever asking the Tenant to get her own estimate for tree removal or for an assessment of the tree, and she stated that it would not make sense for her to ask any residents of the park to do this. She testified that she informed the Tenant that the payment for any tree removal would not be paid without the Landlord first having an arborist assess the health of the tree. She submitted that the Tenant never had any written authorization to remove the tree, and that the Tenant had it removed before the Landlord's arborist could inspect the tree.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 58 of the *Act* allows for compensation to be awarded.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, I do not find that the Tenant has submitted any documentary evidence supporting that a professional had assessed the tree in question and had made a determination on the ill-health of the tree. Furthermore, there is no documentary evidence that supports her allegations that if this tree were in fact dead, that it was a danger to the park. Moreover, I do not find it would be reasonable or logical that the Landlord would ask the Tenant to pay for an assessment of a tree on the park property that would be the Landlord's responsibility to assess and manage.

The Tenant confirmed that she paid to have this tree removed under her "assumption" that she was permitted to. Clearly, if this was her assumption, then it is obvious that she did not have permission to do so. Given that the undisputed evidence is that the Tenant was never provided with any written authorization from the Landlord to remove this tree, I am satisfied that the Tenant simply elected to take matters into her own hands and remove the Landlord's property without any consent to do so.

When weighing all of the evidence before me, I do not find that the Tenant has submitted any documentary evidence, or provided any compelling testimony, to support her allegation that she was permitted to remove a tree on the Landlord's property. As a result, I dismiss the Tenant's request for a rent reduction in its entirety.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenant's Application without leave to reapply.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: May 31, 2022

Residential Tenancy Branch