



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cecile-Evergreen Estate and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, MNDCT, FFT

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for repairs - Section 32;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to repairs?

Are the Tenants entitled to compensation?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy started on August 1, 2020. Rent of \$2,030.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,000.00 as a security deposit and \$1,000.00 as a pet deposit.

The Tenants seek repairs to trees. The Landlord provides evidence of an arborist report on the state of the trees with recommendations (the "Arborist Report"). The Parties reached a settlement agreement on the Tenants' repair claim as follows:

- 1. The Landlord will remove the #1 alder identified in the Arborist Report as soon as possible and no later than September 15, 2022;**
- 2. The Landlord will stabilize with cabling the #4 tree identified in the Arborist Report as soon as possible and no later than September 15, 2022;**
- 3. The Landlord will have a third tree not identified in the arborist report, that the Tenant will point out to the Landlord, inspected by the arborist as soon as possible and no later than September 15, 2022 and the Landlord will follow up on the arborist recommendations for that tree as soon as possible.**

The Tenant states that the Landlord was first informed of the problematic trees in September 2020 following which the Landlord only sent a maintenance worker to inspect. No action was taken by the Landlord. The Tenant again reported the problem trees on October 1 and 19, 2020. No action was taken by the Landlord. After large branches fell in the yard the Tenant sent photos to the Landlord again seeking remediation in January 2021. The Landlord obtained the Arborist Report on the condition of the trees in July 2022 and in August 2022 the Landlord remedied one tree. The Tenant states that following the fall of the branches their children, aged 3, 5 and 8 years, could no longer play in the yard due to safety concerns. The Tenant states that the use of a yard was an important factor for entering into the tenancy agreement. The Tenant claims \$150.00 per month as the loss of their enjoyment of the yard for the period January 2021 to August 2022 inclusive for the total amount of \$3,000.00.

The Landlord states that the Tenants have used the yard as evidenced by photos of yard furniture in the back yard. The Landlord confirms that these photos were not taken with the permission of the Tenants. The Landlord confirms that no persons or children

were in the photos. The Tenant states that the photos do not show any children's play items and submits that the furniture outside does not support the use of the yard.

Analysis

Section 63(2) of the Act provides that if the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or order. Given the agreement of the Parties as set out and bolded above in relation to the repair or removal of the trees, I find that the Parties have settled the Tenants' claim for repairs. Should the Landlord fail to act on the trees as agreed the Tenant has leave to reapply for further repair orders and compensation.

Section 32(1) of the Act provides that 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.

Section 67 of the Act provides that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. Given the Tenant's evidence of tree limbs falling in their yard and the Arborist Report I find that the trees in question posed a significant danger or risk to the use of the back yard as early as September 2020. Given the Tenant's undisputed evidence that the Landlord was repeatedly notified of the tree problems and that the Landlord only sent a maintenance man to check the trees but did not have the trees properly inspected until nearly two years later I find that the Landlord was negligent in failing to inspect the trees in a timely manner. I also find that the Landlord failed to provide a yard free of danger or risk from dead or damaged trees.

Given the Arborist Report and the Tenant's photo evidence I accept the Tenant's evidence that the yard was unsafe with their children unable to use it from January 2021

to the end of August 2022. I consider this loss to be significant to both the children and their parents, the Tenants. I also accept the Tenant's undisputed evidence that the use of the yard was an important part of the tenancy. For these reasons I find on a balance of probabilities that the Tenants have substantiated the loss of value of the tenancy. As I consider their monthly claimed amount to be reasonable in the circumstances, I find that the Tenants have substantiated an entitlement to the compensation claimed of **\$150.00** per month for the period January 2021 to August 2022 inclusive (20 months) in the total amount of **\$3,000.00**. As the Tenants' claim for compensation has been successful, I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,100.00**. The Tenants may deduct this amount from future rents payable in full satisfaction of the entitlement.

Conclusion

The claim for repair of the trees has been settled.

I grant the Tenants an order under Section 67 of the Act for **\$3,100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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

Dated: August 24, 2022

Residential Tenancy Branch