



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding RETIRE WEST COMMUNITIES  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 60; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and make arguments. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue to be Decided

Is the landlord entitled to a monetary award for damage or loss arising out of this tenancy?

Is the landlord entitled to the recovery of the filing fee?

### Background, Evidence

AV gave the following testimony. The tenancy began in September 2008 and is ongoing. The monthly rent of \$537.00 is due on the first of each month. AV testified that he purchased the manufactured home park in August 2020. AV testified that the tenants leased space had an overgrown tree, ivy, grass, bamboo and other vegetation that was encroaching on common space. AV testified that the willow tree became a significant

risk to underground water service due to its widespread roots. LV testified that all tenants were given new and updated park rules that specified that each tenant must keep the property clean, maintained and in proper repair. AV testified that the tenant was given a letter on April 28, 2021 to clean up her property and that the willow tree will need to be removed because of the roots and the risk to underground utilities. AV testified that a second letter was issued to the tenant on October 16, 2021 advising that the tree would need to be removed within 30 days or the landlord would take care of it and the tenant would be responsible for it, the tenant did not respond to the landlord's request.

The landlord had the tenants property cleared of brush and grass at a cost of \$315.00 on November 16, 2021. On November 19, 2021 the landlord had the willow tree removed at a cost of \$1627.50. On December 3, 2021 the landlord incurred a cost of \$420.00 for the stump grinding of the willow tree to ensure it did not continue to grow and spread its roots underground. The landlord seeks the above costs and the \$100.00 filing fee for this application for a total monetary request of \$2462.50. AV testified that the tenant refused to work this out with him despite offering a payment plan.

The tenant gave the following testimony. The tenant testified that she planted "thirsty plants" to help with the water flooding issue on her property. The tenant testified that her yard would flood for six months of the year and it would turn into a marsh. The tenant testified that she planted the willow tree, bamboo plants, ivy and other vegetation to help soak up the water in her yard. The tenant testified that she was never given a copy of the new park rules that LV referred to. The tenant doesn't think she had have to pay the costs of removal and yard cleanup since she didn't authorize the landlord to do so and that the items were on her own property.

### Conclusion

Section 60 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or

damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The arborist report submitted by the landlord states the following:

*“Root zone presents a significant risk if underwater services are in the area as suspected.”*

It goes on to say this:

*“Underground services are believed to be in the proximity of the root zone.”*

I find these statements from the arborist to be general and presumptive without significant and definitive supporting evidence. The landlord has failed to show the necessity of this work and has failed to show if the roots are indeed a risk to the underwater services. In addition, the landlord did not submit the new park rules as referenced by LV specifying the tenants responsibilities in terms of maintenance and repairs. Based on the insufficient evidence before me, I hereby dismiss the landlords claim in its entirety without leave to reapply.

### Conclusion

The landlord’s application is dismissed in its entirety 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 *Residential Tenancy Act*.

Dated: June 12, 2023

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Residential Tenancy Branch