



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: ALOAHIM v JEROME, 2023 ONLTB 13733

Date: 2023-01-04

File Number: LTB-L-038325-22

In the matter of: 1648 NORDIC WAY
OTTAWA ONTARIO K1B5K4

Between: FARAJ ALDAHIM\ YARA AL-YOUSSEF Landlords

And

JEAN LUC JEROME\ n JEANNETTE JEROME Tenants

FARAJ ALDAHIM and YARA AL-YOUSSEF (the 'Landlord') applied for an order to terminate the tenancy and evict JEAN LUC JEROME and JEANNETTE JEROME (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises.

This application was heard by videoconference on November 1, 2022.

The Landlords and the Tenants attended the hearing.

Determinations:

1. As a preliminary issue, the spelling of the Landlord Farah Aldahim's name is amended as above.
2. For the reasons that follow, I find that the Tenants or an occupant of the rental unit wilfully or negligently caused undue damage to the rental property.
3. The Landlords are holding a last month rent deposit.
4. The Landlord incurred costs of \$201.00 for filing the application and are entitled to reimbursement of those costs.
5. There is no dispute that in late October 2021, the Tenants cut down 50-feet of cedar trees at the back of the property by the fence without the Landlords' consent. The Landlords testified that there were approximately 60 cedar trees; they were approximately 15 feet in height and 20-years old. The trees gave the backyard privacy from neighbours backing on to the property, some of which are two-story houses; privacy is very important to the Landlords as they intend on moving into the home at some point in time. The Tenants testified that they thought they were doing the Landlords a favour by cutting the trees because they were all dead at the bottom; the Tenants thought they were helping by making the property look better.

6. The Tenants testified they are willing to replace the trees with the normal sized/aged evergreens that are about 4 to 5 feet in height; they would replace up to 60 of them and pay for the necessary excavation.
7. The Landlords testified that they wanted the trees replaced to the state they were prior to being cut down. The invoice dated October 28, 2021 from Dr. Reno-Vision in the amount of \$29, 911.15, including tax and the necessary excavation, is for 17 trees placed 3-feet apart; the Landlords are seeking compensation of this amount. The Landlords submitted 4 before pictures and 2 after pictures of the treed area; the before pictures were taken just prior to the home being posted for rent in June/July 2019.
8. The Landlords submitted that if the trees are replaced, then they are not seeking eviction but want the order to include conditions. If eviction is granted, they are fine with allowing up to two months for the Tenants to vacate, and they will accept earlier termination with written notice.

Analysis

9. This application is based on section 62 of the *Residential Tenancies Act, 2006* (the 'Act') says:
 - (1) A landlord may give a tenant notice of termination of the tenancy if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex. 2006, c. 17, s. 62 (1).
 - (2) A notice of termination under this section shall,
 - (a) provide a termination date not earlier than the 20th day after the notice is given;
 - (b) set out the grounds for termination; and
 - (c) require the tenant, within seven days,
 - (i) to repair the damaged property or pay to the landlord the reasonable costs of repairing the damaged property, or
 - (ii) to replace the damaged property or pay to the landlord the reasonable costs of replacing the damaged property, if it is not reasonable to repair the damaged property.
 - (3) The notice of termination under this section is void if the tenant, within seven days after receiving the notice, complies with the requirement referred to in clause (2) (c) or makes arrangements satisfactory to the landlord to comply with that requirement.
10. As the N5 was served November 1, 2021, the voiding period ran from November 1 through 8th; as the Tenants did not pay the Landlords the requested amount by the end of the

voiding period, they did not void the notice. The Landlords filed their application based on the Tenants not voiding the N5 notice.

11. Black's Law Dictionary defines damage as:

Loss, injury, or deterioration, caused by the negligence, design, or accident of one person to another, in respect of the latter's person or property.

12. Based on the above definition, I find that the Tenants removal of the trees without the Landlords consent constitutes damage; although not done for any malicious purpose, the trees were willfully removed. There was no evidence presented that the trees were in need of removal, the testimony was that the branches at the bottom were dead. Although the lack of branches at the base of the treeline, what appears to be approximately 3 to 4 feet in height, is noticeable in the Landlords before pictures, this is not evidence that the trees needed cut down; the Tenants testified they believed they were making the property look better by cutting them. The Tenants testified that the neighbours were about the trees being dead and damaging their property, if this was the case, the Tenants should have reported the complaints to the Landlords and not taken the issue upon themselves. The Tenants did not have a right to remove these trees without permission of the Landlords, which they did not have; as such, the Landlords suffered loss to their property by their removal.
13. The issue now becomes what is reasonable in respect of having the trees replaced. The Landlords want compensated the quoted amount of \$29,911.15 for the 50-foot area to be replaced with 17 trees and includes the necessary excavation. The Tenants are willing to have the area excavated and planted with up to 60 evergreen saplings, the size of the ones that can be purchased from a Home Depot or like store.
14. Although the Landlords submitted an invoice justifying the amount they are seeking, the invoice does not say "mature" trees or give an approximate height of the trees being quoted; it merely says it is for the necessary excavating and the planting of 17 trees. Although the invoice basically mirrors the original invoice submitted with the application, but with different costs quoted, neither gives an approximate height of the trees to be planted and there was no testimony given on this point. As such, there is no evidence as to how much privacy would be afforded by these 17 trees. Further, as the 60 trees that were cut are quoted as being replaced with less than a third of the original number and are also being planted farther apart, the Landlords would not be receiving trees in the same state as those removed, which is what they testified to wanting. The new trees would be less crowded and likely look much better aesthetically as there would not be dead lower branches as depicted in the before pictures. Therefore, the Landlords would be benefitting, which is not the Tenants responsibility.
15. Based on the above, I find it more reasonable to allow the Tenants the opportunity to replace the trees, including having the necessary excavating done. The replacement trees shall be no less than 1 foot higher than the back fence to afford a degree of privacy; naturally, the privacy level would increase as the trees age/grow. As it appears 60 trees will not be necessary, the exact number of trees to be planted is best determined by an individual at the place of purchase who has the requisite knowledge but shall not be less than 17 trees as indicated in the Landlords' quotes.

16. It should be noted that although the Landlords testified how important privacy was to them particularly since they intend on moving into the property at some point in the future, they did not testify as to when they expect this to happen. As noted above, as the new trees age/grow the amount of privacy also increases, therefore the Landlords privacy concern is being reasonably addressed.

Relief from Eviction

17. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. It is reasonable the Tenants be given a specific timeframe/date to have the excavation and planting done. I also find the Landlords request for conditions with respect to permission being required removing or altering the Landlords property and/or causing damage in the future.

It is ordered that:

1. The tenancy between the Landlords and the Tenants continues if the Tenants meet the conditions set out below.
2. The Tenants shall:
 - a) Replace the cut-down trees with a minimum of 17 trees that are no less than 1 foot higher than the back fence. The exact quantity of trees required shall be determined by a person with the requisite knowledge at the place of purchase based on the 50-foot-wide area.
 - b) The Tenants shall have the planting area properly excavated to remove the root system of the old trees to ensure the new trees are planted in an area that will enable their proper growth.
 - c) The Tenants shall have the excavation and 50-foot area planted with the required number of trees no later than June 30, 2023.
 - d) For the period of one-year from the date of this order, the Tenants shall not damage the property, including but not limited to altering or removing the Landlords property without consent,
3. If the Tenants fail to comply with the conditions set out in paragraph 2 of this order, the Landlords may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenants. The Landlords must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenants.
4. If the Tenants do not comply with the conditions in paragraph 2, the Landlords are entitled to have the area excavated and planted at a cost not to exceed \$29,911.10, the amount quoted by Dr. Reno-Vison; the Tenants shall be liable for the costs incurred.
5. The Tenants shall pay to the Landlords \$201.00 for the cost of filing the application.

6. If the Tenants do not pay the Landlords the full amount owing on or before January 31, 2023, the Tenants will start to owe interest. This will be simple interest calculated from February 1, 2023, at 5.00% annually on the balance outstanding.

January 4, 2023

Date Issued

Diane Wade

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.