



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: MNDC & FF

Introduction:

This hearing dealt with an application by the tenant for damages and loss under the *Act* due to the alleged harassment and breaches of the tenancy agreement and *Act* by the landlord. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the affirmed evidence of the other party.

This dispute resolution hearing is the 4th hearing dealing with applications initiated by either the landlord or the tenant. The previous decisions were as follows:

File # 239953 – Tenant’s application disputing a two month Notice to End Tenancy for the landlord’s use of the rental unit and disputing an alleged rent increase which did not comply with the *Act*;

File #240445 – Landlord’s application for an early end to the tenancy pursuant to section 56 of the *Act*; and

File #240478 – Tenant’s application disputing a second two month Notice to End Tenancy for landlord’s use of the rental unit and a one month Notice to End Tenancy for cause.

Issues to be Determined:

Is the tenant entitled to compensation related to loss of essential services and facilities which have been unreasonably restricted by the landlord? Did the tenant have grounds to end the tenancy early and to be compensated for moving expenses due to the loss of quiet enjoyment of the rental unit? Is the tenant entitled to aggravated damages due to the ongoing and wilful or reckless actions of the landlord?

Background and Evidence:

The background and circumstances surrounding the dispute between these parties is largely documented in the previous decisions surrounding the earlier dispute resolution hearings noted above and therefore I will not reproduce it in full in this decision.

The tenant is seeking a monetary claim for the sum of \$11,408.00 including the recovery of the \$100.00 filing fee paid for the application. The tenant’s application is comprised of the following:

Reimbursement of two months rent for December 2008 and January 2009 due to the landlord's continued attempts to end the tenancy contrary to the <i>Act</i> and in bad faith	\$1,700.00
Cost of storing the majority of her personal possessions due to vacating the rental unit due to loss of quiet enjoyment and loss of essential services for a three month period.	\$1,023.00
Estimated cost of moving expenses	\$1,785.00
Reimbursement of lost vacation, calculated based on value of vacation time to defend and pursue applications for dispute resolution.	\$2,500.00
Loss of essential services – including carport and reasonable access to rental unit by the driveway	\$300.00
Aggravated damages due to the wilful and reckless harassment of the landlord	\$4,000.00
Recovery of \$100.00 filing fee paid for this application	\$100.00
Total	\$11,408.00

The tenant submitted that she has been the victim of the landlord's relentless attempt to evict her from her rental unit for his own personal gain. The tenant submits that the landlord's actions have not been supported by the evidence and have been contrary to the *Act*. The tenant also submits that the landlord has purposefully and wilfully restricted services and facilities which are protected in her tenancy agreement. The tenant submitted that the landlord has wilfully engaged in actions contrary to his obligations under the *Act*.

As a result of the landlord's actions the tenant submitted that she has the right to end the tenancy early and seeks the resulting damages for her to move, including her storage and moving costs. The tenant acknowledged in the hearing that her actual moving costs were approximately \$511.00 plus her time, but she submitted an estimate based on a professional moving company. The tenant is incurring the claimed storage costs.

Finally the tenant submitted that the landlord has harassed her affecting her wellbeing, health and quiet enjoyment of her rental unit. She alleges that the landlord's action has been wilful and reckless and contrary to his obligations under the *Act*. She has had to defend herself against false allegations and has suffered damage due to the landlord and other occupants slandering and lying about her good character. The landlord claims that their actions have been appropriate and within their rights. The landlord continued to rely on arguments previously presented such as their claimed rights under the policies of the Agricultural Land Commission. The landlord submitted that the tenant has known all along that she would have to vacate given that they have

sold the property and they needed her to vacate the property as part of the conditions of sale.

The landlord submitted that the tenant's access to the carport and road access were not essential services or facilities, but rather privileges which they had the right to revoke at their discretion. The landlord also submitted that he had full right to operate the air compressor as he saw fit given that the property is "working farm". The landlord used a similar excuse for the spreading of manure along side the tenant's access point of her rental unit.

The landlord disputes that the tenant is entitled to any damages or loss. The landlord does not believe he has contravened the *Act*, regulations or the tenancy agreement. The landlord disputes the tenant's claim for moving expenses or that he has acted in bad faith.

Analysis:

Section 77 of the *Act* states that a decision of a Dispute Resolution Officer (DRO) is final and binding on the parties except where it is otherwise provided under the *Act*. As part of making a determination of the tenant's claim I find it is beneficial to briefly outline previous determinations of previous findings relating to the ongoing dispute between the parties.

On file 239953 the DRO made the following findings of fact respecting the landlord's position that he has certain status under the Agricultural Land Commission which supersede the *Residential Tenancy Act*:

It is apparent that the landlord was quite content to have the tenant live on the property without requiring her to be a farm employee until the tenant objected to the imposition of an illegal rent increase.

Then the landlord took the position that the tenancy agreement was somehow illegal. That may be true but I decline to rule in the landlord's favour when the landlord appears to be picking and choosing when he will comply with the law.

The landlord's Notice is set aside because the landlord has not acted with bona fide intentions in the issuance of this Notice and in his compliance with the Agricultural Land Commission Act or the Regulations. The tenancy agreement herein remains in full force and effect.

On file 240445 the DRO made some of the following findings respecting the landlord's application to end the tenancy early pursuant to section 47 of the *Act*:

First of all, I am satisfied that the tenant has not seriously jeopardized the health and safety of the landlord or other occupants. Although there was the incident of October 28, 2008 when the tenant pushed the landlord's wife, I find that this was not an isolated or unprovoked attack. It is not for me to determine whether the actions of the tenant contravene the Criminal Code but to assess whether this seriously jeopardized the health and safety of the landlord's wife. I am satisfied

that the landlord's wife did not allow the conversation to end, despite the clear agitation of the tenant and that she directly stopped the tenant from closing the door. I am also satisfied, contrary to the submissions subsequently made, that after the incident occurred the landlord's wife felt reasonably safe to continue with the conversation. I also place little weight on the evidence from the landlord's witness making statements that they are now afraid of the tenant and fear for their safety. These statements have no basis and seem contrived and solicited.

On file 240478 the DRO made the following findings and Orders respecting the tenant's application to dispute the two month Notice to End Tenancy and one month Notice to End Tenancy, and respecting issues of the landlord restricting essential services or facilities:

I find that the Landlord did not provide sufficient evidence to persuade me that he truly intends to have his son move into the rental unit. I further find that the Landlord has an ulterior motive in issuing this Notice, which is simply to retaliate against the Tenant. The actions of the Landlord in taking away the car port, running an air compressor immediately outside the unit, dumping manure around the rental unit and then forcing the Tenant to walk through the manure to the unit, tend to indicate someone taking undue advantage, having an ulterior motive and not acting in good faith.

I find the Landlord has set out to harass the Tenant into leaving the rental unit and had the Tenant made a claim for monetary compensation under the Act in her Application, I would have been obliged to grant some amount of compensation for this.

The Landlord must return use of the carport to the Tenant immediately. All farm equipment and all property not belonging to the Tenant is to be removed from the carport immediately. The Tenant is to have full use of the carport.

The Landlord may not set up noisy equipment, or cause other noise purposely to annoy or disturb the Tenant, in close proximity to the rental unit. The Landlord must allow the Tenant to drive up to and park at the rental unit. The Tenant must use due caution and observe speed limits at the property. The Landlord must remove the manure on the driveway to the rental unit and in close proximity and cease from putting manure close to the rental unit. Both the Landlord and the Tenant must adhere to the Residential Tenancy Act.

Sections 5, 6 and 7 of the Act provide that landlords and tenants may not avoid or contract outside of the legislation, that the rights and obligations are enforceable and that either landlords or tenants can be compensated if the other party fails to comply with the Act.

Section 14 of the Act states that changes to the tenancy agreement cannot be made unless both parties agree. Section 27 states that a landlord must not restrict or terminate a service or facility if it is essential to the tenant's use as a living accommodation or is a material term of the tenancy. If a service or facility is restricted or

terminated the landlord is required to give the tenant 30 days notice in writing and must adjust the rent based on the equivalent value of that service or facility. Finally section 28 of the *Act* provides that a tenant is entitled to quiet enjoyment of the rental unit which includes rights such as reasonable privacy, freedom from unreasonable disturbance, use of common areas free of significant disturbance and exclusive possession of the rental unit.

Section 45 of the *Act* permits a tenant to end a tenancy early, without 30 days written notice, if the landlord is in breach of a material term of the tenancy agreement and the landlord has not corrected the breach in a reasonable period after being notified of the breach. This would include a landlord's infringement on a tenant's right to quiet enjoyment of the rental unit.

As discussed in the previous dispute resolution decisions the landlord must also have good faith when ending the tenancy for purposes of the landlord using the rental unit. As found previously, it was determined that the landlord served a notice for landlord's use that was not in good faith. Evidence presented during this hearing by the landlord has confirmed this previous determination.

I find it significant and telling that the landlord took the position in his defence that the "tenant knew all along that she would have to vacate". The landlord provided statements in the hearing which confirm, in my mind that all along the landlord has been seeking ways to vacate the tenant for his own benefit as part of the sale of half of the property to the current farm manager. This evidence also confirms my previous assessment of the credibility of the farm manager evidence on file 239953. Both the landlord and the farm manager have attempted to evict this tenant for their own purposes and to avoid serving the tenant a proper notice to end tenancy under section 49 of the *Act* that is applicable when a rental unit is sold.

This includes the landlord's harassing tactics such as removing services and facilities which the landlord conveniently referred to as "privileges". By these actions the landlord has breached all the material terms of the tenancy agreement and the tenant's rights under the *Act*.

I accept the tenant's application in part. I find that the tenant had the grounds on which to end this tenancy early pursuant to section 45 of the *Act*. I also accept that due to the loss of quiet enjoyment and the landlord's breach of the tenancy agreement and the *Act* the tenant is entitled to damages resulting from moving. I accept the tenant's claim for storage costs for the sum of \$1,023.00 and for the tenant's actual moving costs for the sum of \$511.00. In addition, I award the tenant the sum of \$200.00 for her own time and expense related to moving and storing her possessions.

I find that the landlord breached the tenancy agreement by withdrawing essential services and facilities which were essential to the tenant's use of the rental unit for the purpose of living accommodation. I award the tenant the sum of \$300.00 due to the loss of the carport, loss of access through the drive way to the rental unit, and the manure that was spread near the tenant's access to the rental unit. I find that these actions were solely due to the landlord's attempt to harass the tenant and end this tenancy.

I also find that due to the landlord's actions and breaches of the tenancy agreement and *Act* that the tenant has lost all quiet enjoyment of her rental unit since October 2008. The landlord's actions have poisoned the relationship beyond repair and the landlord should have known or could reasonably have known that these actions would result in loss to the tenant. I Order that the tenant be reimbursed her full monthly rent of \$850.00 for three months for the sum of \$2,550.00. I also find that the tenant is not responsible for paying the rent for January 2009.

Although the tenant has claimed damage related to her use of vacation used to pursue or defend herself at dispute resolution hearings, this is not a claim I would accept. Each party is responsible for their own cost of participating in disputes under the *Act*.

I have considered the tenant's additional claim for aggravated damages due to the harassing tactics of the landlord. Policy guideline 16 of the *Residential Tenancy Policy Guidelines Manual* provides the following guidelines when assessing aggravated damages:

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.
- They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life.
- They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

The tenant is claiming the sum of \$4000.00 related to loss of personal time, beyond her claim for lost vacation from work, dealing with the numerous police interactions which resulted from the tenant or landlord calling the police, loss of quiet enjoyment due to the running air compressor, the allegation of assault against her by the landlord's wife, the invasion of her personal living space by the landlord and due to the slander and lies she alleges the landlord has spread to other occupants on the property.

Although I find that the landlord has engaged in deliberate action to harass and evict this tenant contrary to the provisions of the legislation and that the actions have been of

significant durations and depth, I am not satisfied that the tenant has not been fully compensated for her loss through the awards granted for moving expenses, loss of services and facilities and loss of quiet enjoyment. I deny the tenant's application for aggravated damages.

I find that the tenant has established a total monetary claim for the sum of **\$4,684.00** including the recovery of the \$100.00 filing fee paid for this application.

Conclusion:

The tenant's application is granted in part. I award the tenant a monetary Order for the sum of **\$4,684.00** due to the landlord's breach of the tenancy agreement, the *Act* and the tenant's loss of quiet enjoyment. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated January 22, 2009.

Dispute Resolution Officer