

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: OLC, CNC, MNDC, RR, RP, FF

Introduction

I have been delegated authority under section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

This is the Tenant’s application to cancel a Notice to End Tenancy for Cause; for a monetary order for compensation for damage or loss; for an order that the Landlords comply with the Act; for an order that the Landlords make repairs to the unit, site or property; to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the Landlords for the cost of this application.

Preliminary Matters

Section 52 of the Act states:

Form and content of notice to end tenancy

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
 - (e) when given by a landlord, be in the approved form.

The Landlord did not comply with Section 52. The Notice is not in the approved form and is not dated. The Tenant’s application to cancel the Notice is granted and the tenancy remains in full force and effect.

Background and Evidence

The Tenant and her advocate gave the following affirmed evidence:

Service

The Tenant testified that she mailed the Landlords copies of the Application for Dispute Resolution and hearing package on March 4, 2009, by registered mail to the address where the Landlords live and carry on business as Landlords. The Tenant provided tracking numbers for the documents. The Tenant testified that the Landlords did not pick up their packages at the Postal Outlet. The Tenant's advocate testified that she phoned the Landlords and advised them of the date and time of the Hearing.

The Tenant testified that she hand delivered the evidence and copies of the Notice of Hearing documents to the Landlords at their residence on April 24, 2009.

The Tenant, or her advocate, provided the following testimony and evidence:

- The tenancy started on December 1, 2008. The monthly rent is \$1,500.00, due on the first day of the month.
- There is no written Tenancy Agreement, although the Tenant has repeatedly requested that the Landlord provide one.
- The Landlords did not participate in a move-in inspection. The Tenant performed her own inspection on February 24, 2009, and provided a copy to the Landlords and a copy into evidence.
- The Tenant provided black and white photocopies of pictures depicting the rental unit, inside and outside.
- The Landlords live in a property adjacent to the Tenant's house. The fence between the properties is broken, and the Landlords' horses enter the Tenant's pasture, feeding on the Tenant's horses' mash and hay. The Tenant has requested that the Landlords fix her fence, to which they replied that she would need to put up the additional fencing.

- The Landlords' dogs also enter the Tenant's property and provoke the Tenant's dogs. The Landlords' dogs are left outside during the night and disturb the Tenant's sleep by barking late at night and early in the morning.
- When the Tenant moved into the rental unit, there were deficiencies and repairs to be done to the property, including: finishing the stairs, railing and banister leading to the upstairs master suite; installing cabinets, a mirror, toilet paper holders and towel racks in the 2 bathrooms; completing the trims and baseboards throughout the house; painting the inside doors and door frames; installing upper cabinets in the kitchen; installing a fan for ventilation in the kitchen; installing blinds or curtains throughout the house; repairing the wood furnace; and installing drawers in the kitchen and a cupboard door in one of the lower kitchen cabinets. The Tenant testified that the Landlords had promised to complete the repairs and deficiencies by December 1, 2008. The Tenant testified that to date none of the work has been done.
- The Tenant testified that, because of the faulty furnace, the inside of her house was very cold over the winter months.
- The Tenant testified that she does not have keys to the mud room that connects the house to the garage. The Tenant testified that part of the tenancy agreement was that the Tenant would have use of the garage. The Tenant testified that the Landlord BK uses the garage as a workshop and refuses to remove his belongings from the garage so she can park her car in the garage.
- The Tenant testified that there are old vehicles and farm equipment in her yard. She has requested that the Landlords remove them, but the Landlords have not complied with her request.
- The Tenant testified that the Landlord BK constantly attends her property, uninvited.

Analysis

I accept the Tenant's testimony that she mailed the Landlords copies of the Application for Dispute Resolution and hearing package on March 4, 2009, by registered mail to the address where the Landlords live and carry on business as Landlords. Section 90 of

the Act deems service in this manner to be effective 5 days from mailing of the documents. Although duly served, the Landlords failed to attend the Hearing, and the Hearing proceeded in their absence.

On careful consideration of the testimony and evidence provided by the Tenant, and in the absence of any contrary evidence or testimony from the Landlords, I find that the Tenant has proven her claim in its entirety.

The Landlords have failed to provide the Tenant with quiet enjoyment of the rental unit, in accordance with Section 28 of the Act. The Landlords have breached Section 29 of the Act, by entering the rental property without notice or permission. The Landlords have failed to provide essential services, and make emergency repairs (i.e. a properly working furnace), in compliance with Sections 27(1) and 33(1) of the Act. The Landlords have failed to repair and maintain the residential property in accordance with Section 32(1)(a) of the Act. For reference, copies of these Sections of the Act are attached to my decision.

I hereby order the Landlords to comply with Sections 28, 27(1), 29, 33(1) and 32(1)(a) of the Act, as follows:

- By July 31, 2009, make repairs and complete deficiencies to the rental unit as follows:

finish the stairs, railing and banister leading to the upstairs master suite; install cabinets and a mirror in the master bathroom; complete the trims and baseboards throughout the house; paint the inside doors and door frames; install upper cabinets in the kitchen; install a fan for ventilation in the kitchen; install blinds or curtains throughout the house; repair the wood furnace, or provide an alternate appropriate heat source; install drawers in the kitchen and a cupboard door in the lower kitchen cabinets; and repair the fence in the pasture.

- Desist from entering the rental property, except in accordance with Section 29 of the Act.
- Immediately provide the Tenant with a key to the mud room.
- Remove the abandoned vehicles from the Tenant's yard by July 31, 2009.

Having found that the Landlord has contravened sections 27(1), 28, 29, 33(1), and 32(1)(a) of the *Act*, therefore under section 7(1) of the *Act*, I find that The Tenant is entitled to compensation for loss of quiet enjoyment and the Landlords' failure to repair and maintain the rental property in the amount of \$300.00 per month, from December 1, 2008 to May 1, 2008. The Tenant is entitled to a rent reduction in the amount of \$300.00 per month until the Landlord complies with the *Act*.

The Tenant has been successful in her application and is entitled to recover the filing fee in the amount of \$50.00 from the Landlords.

Conclusion

The Notice to End Tenancy is cancelled. The tenancy remains in full force and effect.

I hereby order the Landlords to issue keys for the mud room to the Tenant immediately.

I hereby order the Landlords to make repairs and complete deficiencies by July 31, 2009.

I hereby order that the Tenant is entitled to apply the compensation from December 1, 2008 to May 1, 2009 in the amount of \$1,500.00 towards her June, 2009 rent.

Therefore, there will be no rent payable by the Tenant to the Landlords for the month of June, 2009. Rent for the successive months will be reduced to \$1,200.00 per month, to continue each month until the Landlord complies with the *Act*. The recovery of the \$50.00 filing fee may be deducted from July, 2009 rent. Therefore, rent for July, 2009, will be \$1,150.00.

May 6, 2009
