

DECISION

Dispute Codes CNC OLC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to cancel a notice to end tenancy for cause, to Order the Landlord to comply with the Act, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail. The Landlord confirmed receipt of the hearing documents.

The Landlord, the previous land owner, and both Tenants appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Are the Tenants entitled to an Order to cancel a Notice to End Tenancy issued for cause pursuant to section 47 of the *Residential Tenancy Act*?

Are the Tenants entitled to an Order to have the Landlord comply with the Act pursuant to section 62 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony provided the Tenants entered into a written fixed term tenancy agreement with the previous land owner effective August 1, 2008 which switched over to a month to month tenancy after July 31, 2009. The rental property was originally located on a 33.5 acre piece of property which was recently subdivided and a 10 acre parcel, which includes the property where the Tenants reside with their two horses, was sold to the Landlord and title was transferred on February 8, 2010. The current rent is payable on the first of each month in the amount of \$1500.00 plus \$100.00 for each horse occupying the land. A security deposit of \$750.00 was paid on June 14, 2008.

The Landlord testified that he first met with the Tenants on one of his first visits to the property, approximately February 13, 2010, at which time he requested the Tenants to not put their horses in the pasture and that since that first discussion he had three or four verbal discussions with the Tenants when he informed the Tenants not to let the horses into the pasture. The Landlord argued that he has put locks on the pasture gates, locked gates open, and ropes were put around and the Tenants continued to sneak the horses through and into the pasture. The Landlord stated that he informed the Tenants he has plans to put cows into the pasture and he does not want the horses in there to graze and trample down the pasture. The Landlord confirmed that he had a verbal agreement with the male Tenant that he would install a hot wire fence to allow the horses access to a section of the pasture and that he later changed his mind after he discussed the issue with his father and the previous land owner.

The Landlord went on to explain that he attends the rental property three to four times per week and has seen the horses in the pasture. The Landlord argued the Tenants are simply ignoring his requests to keep the horses out of the pasture so a 1 Month Notice to End Tenancy for cause was issued on February 28, 2010, with an effective move out date of May 31, 2010, and was served to the Tenants personally by the Landlord on March 1, 2010.

The female Tenant testified the Landlord first appeared at the rental unit, unannounced on February 9, 2010, when they noticed him sneaking around their deck. The female Tenant stated that the Landlord engaged in a heated argument with her husband that day, which is when the Landlord first announced the horses were not to be in the pasture.

The male Tenant confirmed that he has had several discussions with the Landlord regarding the location of the horses, proper fencing for the paddocks, access to the front pasture, and the installation of a hot wire fencing in a section of the pasture to provide a grazing area for the horses.

The male Tenant argued that from the onset of their tenancy they worked with the previous land owner in changing which fields and pastures the horses had access to. The male Tenant stated that while they didn't have special or specific access there was always a place provided on the 33.5 acres for the horses to graze. Over the past six months or so the previous land owner began to subdivide the property, installing a driveway to the new subdivision and trampling the field or pasture that they normally used. In the subdivision process the original fencing around the paddock has been removed and replaced with a temporary "chicken wire type" fencing which also

decreased the size of the horse paddock from the original size of approximately 80' x 80' to the current size of 30' x 80' to accommodate for the new driveway and property division.

The Tenants testified that the Landlord was supposed to attend the rental unit on February 13, 2010 to do a walk around and did not show up until February 14, 2010 which is when they discussed the safety of the horses and the issues surrounding the temporary fencing. The Tenants argued the Landlord agreed to have the fencing repaired and to install the hot wire fencing.

The male Tenant argued that the horses have been injured, are restless and have gotten out of the paddock and in March 2010 they broke out of the paddock at least three times. The female Tenant stated that they have had to call the police and open up a file as the Landlord has allegedly cut the ropes and allowed the horses to get out.

Towards the end of the hearing the Landlord advised that he had two people attending the hearing, on extension/cordless phones, which he did not previously identified to me. These additional people were the Landlord's father and the previous land owner.

The previous land owner testified that he is no relation to the Tenants and confirmed he subdivided the 33.5 acre property, that he removed the original fencing around the paddock, installed a temporary fence, reduced the size of the paddock where the horses are kept, and created a driveway for the subdivided property alongside the paddock.

The Landlord testified his original purchase agreement includes subjects whereby the previous land owner is required to finish the fencing on the property but that there are no dates listed for completion.

The male Tenant testified that the horses used to have access to several areas of the property that nothing was written specifically for the area they could use because they would go from field to field based on the conversations with the previous land owner, and his uses and wishes of the 33.5 acres. The male Tenant argued that they are conscious of the required care of the pastures so the fields are not damaged. The Tenant clarified, that in the past, the horses would be housed or given space where it was best for both the previous owner and the care of the horses. The Tenant spoke of an example whereby one winter the horses were housed closer to the back of the house and deck.

The male Tenant described the area in question as follows, if one considers the main road to be the front of the house you would enter from the main road, to the horse paddock, to the pasture in question, then to the house. The male Tenant argued that to get directly to the horses one would walk through the pasture in question, from the house, to get to the horse paddock. It is this pasture in question that the Landlord previously agreed to install a hot wire fencing to allow the horses access to an area approximately 1/5th of the pasture.

The Landlord provided additional testimony to confirm that he attends the 10 acre property regularly, up to four times per week to work in his shop and/or to visit with the other occupants. The Landlord confirmed that there are other rental buildings on his 10 acre property which include a) a trailer with an addition that is occupied by tenant(s); b) a shop with a rental unit above it which is currently occupied by a tenant; and c) another workshop building which the Landlord possesses but does not reside at. The Landlord confirmed the rental unit is located on the far end of the property in an area that is completely separate from the other rental units. The Landlord stated in order to access the other rental units or his work shop he has to drive on the main driveway which is approximately 500 yards from the rental house in question, and runs past the rental house.

The Landlord confirmed that he had a copy of the original tenancy agreement which was passed on to him from the previous land owner. I requested the Tenants fax a copy of the tenancy agreement to the *Residential Tenancy Branch*.

Analysis

All of the testimony and documentary evidence was carefully considered.

As per my request a copy of the Tenants' tenancy agreement was received at the *Residential Tenancy Branch* on April 21, 2010. After review of the tenancy agreement I note that the Tenants paid a security deposit of \$500.00 and a pet deposit of \$250.00 on June 14, 2008, and rent is \$1500.00 per month plus \$100.00 per horse being boarded at the rental property.

I note that the while the Landlord is the owner of the rental property, at the moment he entered into tenancy agreement(s) with tenant(s), whether verbal or written, he gave exclusive occupation and possession of the full rental property to the Tenants, in exchange for rent, and is subject to the obligations as set out in the *Residential Tenancy Act (Act)*.

Section 93 of the Act provides that obligations pass with the transfer or assignment of land and therefore the Landlord is responsible for the tenancy. Based on the above I find the rental property to include full access to the farm house, paddock space which the horses currently occupy, plus all pastures and common space located on the current 10 acre property.

The evidence supports the services and facilities provided at the onset of the tenancy have changed as a result of the previous land owner's actions of subdividing and selling the property, removing the permanent fencing of the paddock, reducing the size of the paddock, and by installing temporary fencing which has caused the horses injury, all in contravention of section 27 of the Act. I find these changes have directly impacted the care and well being of the two horses which occupy the property and that the actions or lack of action of the current Landlord have increased the risk and disturbance to the Tenants and their horses.

Section 27 provides as follows:

(1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

After careful review of the evidence I find the Tenants have suffered a loss to the value of their tenancy, as a result of the horse paddock size being reduced, by the subdivision of the property, by not having the space to safely house the horses, and by the restriction on the grazing opportunities, in contravention of section 27 of the Act, as listed above. Therefore I hereby order the following:

- a) The Landlord is hereby ordered to have permanent fencing installed around the existing paddock, without reducing the current paddock size, no later than **May 5, 2010**.
- b) The Landlord is ordered to provide the Tenants a work schedule, in writing, a minimum of 24 hours prior to the start of the fencing work. The work schedule is to include the start date, days of the week, and the times the work will be performed between the hours of 8:00 am and 8:00 pm, to install the permanent fencing.
- c) Having found the horse paddock and pasture to be included as part of the rental unit, the Landlord is hereby ordered to allow the Tenants unlimited access for their two horses to the entire pasture, which is located between the rental unit and the horse paddock, and to the horse paddock.
- d) The Tenants are responsible for having the horses out of the workmen's work area and are responsible for the care and security of the horses at a mutually agreed upon location on the rental property.
- e) The Tenants are hereby ordered to accommodate/cooperate with the Landlord and his workmen at the rental property in accordance with my above orders.

I find the evidence supports that the Landlord has been accessing the rental property in contravention of section 29 of the Act and as a result the Landlord has breached the Tenants' right to quiet enjoyment of the rental property as provided in section 28 of the Act.

Based on the above, I hereby Order the Landlord has restricted access to the right away of the driveway / roadway from the main road that leads directly to the Landlord's shop, which is restricted to five feet on either side of the driveway / roadway. This access is granted only when the Landlord is attending his shop which is located "at the other end of the 10 acre property". That being said the Landlord's right to access the remainder of the 10 acre property is restricted in accordance with section 29 of the Act as follows:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Upon review of the 1 Month Notice to End Tenancy, I find the Notice not to be completed in accordance with the requirements of the Act. Upon consideration of all the evidence presented to me, I find the Landlord has failed to prove the causes for issuing the 1 Month Notice to End Tenancy issued on February 28, 2010.

I note that the Tenants are at liberty to seek monetary compensation if the Landlord does not comply with the Act or my Orders as listed above.

I caution the Landlord that under section 95 of the Act, any person who contravenes the Act or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine or administrative penalty.

I have included in the Landlord's decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the Landlord to familiarize himself with his obligations as set forth under the *Residential Tenancy Act*.

The Tenants have been successful with their application, therefore I award recovery of the \$50.00 filing fee.

Conclusion

The 1 Month Notice to End Tenancy issued February 28, 2010, **is hereby cancelled** and is of no force or effect.

I HEREBY ORDER the Landlord to comply with the *Residential Tenancy Act* and to comply with my Orders, as listed above, pursuant to section 62 of the Act.

The Tenants are at liberty to deduct \$50.00, onetime, from their future rent payable as recovery of the filing fee.

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: April 21, 2010.

Dispute Resolution Officer