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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenant – CNR, OLC, FF

For the landlord – OPR, MNR, MNDC, FF, ET

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together. The tenants have requested to cancel the 10 Day Notices for unpaid rent; they seek an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and seek to recover their filing fee. The landlord seeks an Order of Possession for unpaid rent and an Order of Possession based on an Early End to Tenancy. The landlords seek a Monetary Order to recover unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. The landlords also seek to recover their filing fee.

I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing. Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Preliminary Issues

First of all it is my decision that I will not deal with all the issues that the applicant has put on the application. The landlord has requested an Order of Possession based on an Early End to Tenancy. The landlord was advised that this type of order cannot be combined with any other Order of Possession when she amended her application but failed to remove this part. Consequently, I will not deal with this section of the landlord's application and dismiss it with leave to reapply.



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Issues(s) to be Decided

- Are the tenants entitled to an Order to set aside the Notice to End Tenancy?
- Are the tenants entitled to an Order for the landlord to comply with the Act, regulations or tenancy agreement?
- Are the landlords entitled to an Order of Possession based on the 10 Day Notice?
- Are the landlords entitled to a Monetary Order for?
 - a) Unpaid rent
 - b) Money owed or compensation for damage or loss.

Background and Evidence

Both parties agree that this tenancy started on December 01, 2006. This was a fixed term tenancy which reverted to a month to month tenancy at the end of the fixed term. The tenancy agreement shows that rent is \$1,000.00 per month which is due on the first of each month and the addendum to the agreement shows that the rent has been reduced to \$800.00 per month from June 01, 2007 in recognition of work done on the property including but not restricted to attending to fruit trees, shrubs, vines and restorations of the garden and that the tenant will attend to carpentry work on the unfinished suite and oversee the engagement of sub trades. It is also agreed that the tenants occupy the property as tenanted land and not run a hobby farm.

The landlord's application

The landlords testify that the tenants did not carry out the agreed work on the property for the reduced rent. The landlords agree that the property was in a very neglected state when the tenants took over but state they did not "sugar coat" the amount of work involved in bringing the property up to an acceptable condition. The landlords state that each year they visited the property they were upset about the lack of work done by the tenants. They claim the fruit trees have been neglected and the blackberry bushes have grown at a pace that they have choked the fruit trees to the point where the trees will not produce fruit and the plum tree and fig tree have died. The grapevines were not maintained and were very overgrown to the extent that the



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landlords have now had to pull them out. The landlords also state that the tenants did not prepare and maintain the vegetable garden.

The landlords agree that they did not acquire the necessary permits for the tenant to do carpentry work on the unfinished portion of the house.

The landlords state that the tenants complained to them about the tractor but they state it was evident from the weeds growing around the tractor that it had never been used. The landlords state the tenants complained about the state of the road and they gave them permission to fix the road however the gravel that was delivered has remained in a pile and has not been used. The landlords claim that there was no sign of the tenants growing any produce when they visited the property and the soil had not been prepared in any way. She claims an agent from BC assessment also visited the property in 2010 and the landlords state she told them that the tenants could not have grown any produce in 2008.

The landlords state that the tenants did not maintain the buildings and two lean to structures collapsed under the weight of the snow because the tenants did not brush the snow from them. The landlords have included an estimate for this work in their evidence but have not filed an amendment to their application for this increased monetary amount.

The landlords testify that in May, 2010 they had a discussion with the male tenant about the work they had agreed to do to the property and the fact that this agreed work had not been done. The landlords claim the male tenant agreed with them and also agreed with a handshake that the rent should go back to \$1,000.00 from July 01, 2010. The landlords state the tenants have not paid the extra \$200.00 per month and they issued them with a 10 Day Notice to End Tenancy on July 19, 2010 and again on August 02, 2010. The landlords seek to recover the alleged outstanding rent of \$600.00.

The tenants dispute the landlord's testimony. The tenant attending testifies that at the beginning of the tenancy a discussion took place with the landlord that the level of work required could take five years to return the property to a good condition. The tenant states that at no time did

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the landlord provide them with a time frame for when work had to be carried out. The tenant states that in 2007 the landlord called her and told her that they had made a mistake in the agreement and that the tenants would be required to farm the land to maintain the landlord's farm status so their tax burden could be reduced. The tenants state the overgrowth was extremely severe. The tenant claims the landlords asked them to concentrate on the farm status and they had to file a log of produce grown and sold with BC Assessment. The tenant states that it was the landlords who changed their role on the property and they had to now farm the land, buy seed and sell the produce in order for the landlords to maintain their farm status and keep their taxes low. The tenant states that the landlords demanded that they fulfil this farm role and this took a lot of time and effort on their part which then took their time away from the work clearing the orchard as specified under the terms of their agreement.

The tenant testifies that each year they cleared a plot of the vegetable garden, She claims they used organic compost on the soil and over dug the soil to aerate it before planting radish, lettuces, corn, beets, carrots, spinach, cucumber, zucchini, onions, Swiss Shard, celery, squash, pumpkins, peas, parsnips and catnip. The tenant states these items were on the log sent to BC Assessment for the first year and she sold her produce to a restaurant in Vancouver. Their total crop for the year came to \$2,545.93.

The tenant claims that in 2009 they had cleared another part of the garden and planted in the early spring however they ran into irrigation problems due to a lack of rain and a reduction in the size of the lake. She claims there were water tanks installed on the property but neither the landlords nor the tenants could determine how these worked. The tenant states they were advised by local people to wait for cooler weather before turning the soil in order to keep the moisture in. The tenant claims the landlords arrived for a visit in the fall of 2009 and were unhappy about the tenant's progress. The tenant states she asked one of the landlords if she needed to fill in a BC Assessment form for that year and was told no.

The tenant states that in August or September, 2009 she discovered how the water tanks worked and purchased four new soaker hoses as the water lines from the tanks had been cut. The tenant states this was in preparation for planting in 2010. She states she also purchased



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\$250.00 worth of seeds. The tenant claims a local vender had approached her in 2010 to buy all her organic produce from her. The tenant states that all this was done for the benefit of the landlords.

The tenant states when the landlords arrived in May, 2009 they had a conversation with her husband about wanting \$500.00 rent for them using the barn as storage for his tools. The tenant states they had already been given permission to use the barn for storage in 2008. The tenant states that her husband only agreed to an increase in rent in principal as he thought this was an increase for the rent of the barn and not the additional \$200.00 for their rent of the property. The tenant claims the landlords were unhappy about the amount of work they had done on the property and wanted them to pay the extra \$200.00 rent and to move from the property.

In July, 2010 the tenant states they had a meeting with the landlords and both sides expressed how unhappy they were with the other side. The tenant claims the landlords complained about the state of the orchard and the tenant claims this was because the landlords had wanted them to concentrate on the farm work. The tenant states both her and her husband also work full time. She claims the landlord told her that they were now relieved of all responsibility for the farm work and that they should leave as soon as possible. She claims the landlord also blamed them for the loss of the farm status and the fact that they would now incur a large tax increase. The tenant states she was shocked at this statement as she knew the filing for this was not required until October, 2010. The tenant states that after this they stopped all work on the property and the landlord rented the land out to a third party to farm.

The landlords seek to recover the sum of \$2,575.00 from the tenants. They state the tenants were allowed to use the stored fire wood but the agreement was that they would replace what they used. The landlords estimate that the tenants have used seven cords of wood at \$150.00 per cord to a total sum of \$1,050.00. The landlords seek to recover this amount from the tenants or an Order that the tenants must replace the fire wood from the fallen trees on the property. The tenant's state that they usually cut the firewood in the summer in preparation for the winter; However, after the landlords told them that they could no longer use their tools they were unable to do this as they do not have a chainsaw to cut the wood and the landlord would not allow them



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to get the larger chainsaw repaired. The tenant disputes the landlord's claim that it would cost \$150.00 to replace the wood when there is an abundance of wood lying around the property and they would just need to cut it.

The landlords seek the sum of \$75.00 to replace dead fruit trees and berry bushes. The landlords claim that due to the tenants negligence the blackberry bushes overgrew the plum and fig trees and the trees have since died.

The tenants disputes the landlords claims she states the landlords could not tell them where the blueberry bushes were as the land was so overgrown at the start of the tenancy. She also claims that this is not a young orchard and in previous years the trees have not been pruned correctly and some carried disease. She claims that the plum tree was broken in a winter storm in 2008 and the family agreed the tenants could take part of it down. She claims they cleared the bushes each year and each year nature took its course and they grow back. This is an ongoing process. The tenant claims they are not responsible for the loss of any trees.

The landlord seeks to recover \$50.00 for the generator key she claims that the tenants have misplaced.

The tenant disputes this and claims the key was given to the landlords' brother as he was hoping to sell the generator and asked for the key. The tenant testifies that they told him to hang onto the key after the first showing or the generator to prospective purchasers in case he needed it again to show to someone else.

The tenant's application

The tenant states that they do not owe rent to the landlord of \$600.00. She claims they did complete work on the property and were prevented from doing more because the landlord expected them to take over responsibility for farm work instead. The tenant seeks to have the Notice to End Tenancy set aside but also states that she has since given the landlord a Notice to End Tenancy effective on October 01, 2010 and they will vacate the rental unit on that day.



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The tenant seeks an Order for the landlord to comply with the Act. She states the landlord did not give them written notice of a rent increase, there was no written notice of the landlord's expectations for work to be carried out on the property and the landlord has rented the land to another tenant when it still remains part of their rental agreement with the landlord.

The landlord states the rent increase was not an increase for rent for the barn it was to return the original rent to the \$1,000.00 because the tenants had failed to maintain the property. The landlords also state the tenants knew what was expected of them with regard to the maintenance of the property. The landlords do not dispute that they have now rented the property to a third party and the tenants now only occupy the house.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlord's application for an Order of Possession based on the 10 Day Notice to End Tenancy for unpaid rent: While I accept that the tenants have failed to maintain the orchards, gardens and road on the property I find it would be unreasonable of the landlords to expect the tenants to keep up this high level of maintenance and repair when the landlords asked them to divert their attention to maintaining their farm status and start to prepare, plant, grow and sell produce in order for the landlords to continue to receive this farm status and associated tax reductions. The landlords argue that they were unhappy about the amount of work being done on the property each time they visited but they did not give the tenants any warning letters concerning this or draw up a workable time frame for when they expected work to be completed.

The landlords argue that the tenants could not have grown the quantity of vegetables that they stated they grew on the BC Assessment log however *the* landlords have provided no evidence to dispute the tenants claim and although they state an agent for BC assessment visited the property they have not provided any evidence to support this agents findings. It is also my decision that this visit took place in 2010 and the tenants had stated that they could not produce

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crops in 2009 due to the failure of the irrigation system which would be the responsibility of the landlord. Consequently, it is my decision that the tenant's agreement with the landlord became frustrated due to the additional demands on their time to farm the land and therefore the landlords claim for unpaid rent is denied. The 10 Day Notice is therefore set aside and the tenancy will continue until the tenants vacate the property on October 01, 2010.

With regard to the landlords claim for money owed or compensation for the firewood used by the tenants; I find the tenants are responsible to replace any firewood they have used by the end of the tenancy and although the tenants argue that the landlords prevented them from using their tools and they do not have the means to replenish the firewood, the responsibility for this firewood remains with the tenants. As the tenancy will not end until October 01, 2010 the landlords application for a monetary award is premature. **I therefore order the tenants to replace the firewood they have used during the tenancy before the tenancy ends.** If the tenants fail to replace this firewood the landlords are entitled to reapply for a Monetary Order for the cost of replacing the firewood.

With regard to the landlords claim for \$75.00 to replace the alleged dead fruit trees; the landlord has provided no evidence to support their claim that the trees were dead or that it was the tenants neglect of the orchard that killed the trees and no receipt or estimate to show the actual cost of replacing the trees. Consequently this section of the landlords claim is dismissed.

With regards to the landlord's claim of \$50.00 for the missing generator key; when a landlord's evidence is contradicted by the tenants, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that the tenants have misplaced the generator key and it was not given to the landlord's brother, consequently this section of the landlords claim is dismissed.

With regard to the tenants claim for an Order for the landlord to comply with the *Act*, regulation or tenancy agreement; I find the landlords have breached the tenancy agreement by renting out the land associated with this tenancy to a third party. Section 27 of the *Act* states:

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- 27** (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.

The tenancy agreement clearly shows that the tenants occupy the property as tenanted land and the landlords withdrew this land from their use without reducing the rent or providing the tenants with 30 days written notice. However, as the tenants have stated that they have now given the landlord notice to end the tenancy by October 01, 2010 no order will be issued at this time as the tenancy will end.

As the tenants have been successful with their claim I find they are entitled to recover their filing fee from the landlord pursuant to section 72(1) of the Act. A Monetary Order has been issued to the tenants for \$50.00.

As the landlords have been largely unsuccessful with their claim they must bear the cost of filing their own application.

Conclusion

The tenant's application is allowed. The 10 Day Notices to End Tenancy for unpaid rent dated July 19 and August 02, 2010 are cancelled and the tenancy will continue. A Monetary Order



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has been issued to the tenants for **\$50.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The landlord's application is dismissed without leave to reapply with the exception of filing a new application in the event the tenants do not replace the firewood used during their tenancy and for an Order of Possession based on an Early End to Tenancy in the event the tenants do not vacate the rental unit on October 01, 2010.

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: September 16, 2010.

Dispute Resolution Officer