



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OLC, MNDC, FF, O

Introduction

This matter dealt with an application by the tenants for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order for the landlord to comply with the Act, Regulations or tenancy agreement and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were hand delivered to the landlord on July 23, 2010. The tenants amended their application on July 29, 2010 and served the landlord with their amended application on September 01, 2010. At the first hearing the tenants state they had not received any evidence from the landlord and the hearing was adjourned to allow the landlord to send her evidence to the tenants. The tenants formed a rebuttal of this and sent this by registered mail to the landlord. The landlord states she did not receive this; however, as it was sent by registered mail it was deemed served five days after posting pursuant to s. 90(a) of the *Act*. The hearing was reconvened on today's date.

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:

Issues(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for the landlord to comply with the *Act*?



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

Background and Evidence

Both parties agree that this month to month tenancy started on September 01, 2009. No written tenancy agreement was in place. The tenancy ended on August 31, 2010. Rent for this property was \$1,600.00 plus a proportion of the Hydro costs. The tenants paid a security deposit of \$800.00 which has been returned to them by the landlord.

The tenant's testify that the gas supply which was in their name also ran the generator which would kick in if the property lost power. The tenant's states as the landlord also benefitted from this generator which supplied power to her house in the event of a mains power loss that the delivery charge of \$11.96 should be shared equally by the landlord over the term of the tenancy of 12 months. The tenants seek to recover the sum of \$ 71.76 ($\$5.98 \times 12$) from the landlord for her share of this delivery charge as the tenant's state they were not informed the generator was connected to their gas meter.

The tenants seek to recover \$180.00 from the landlord for Hydro usage. The tenant's testify that the advertisement for the property stated that Hydro bills were usually between \$40.00 to \$70.00 per month. The tenants claim after the first bill came in they were told they had hardly used anything so not to worry about it. The next spread sheet from the landlord that came in February, 2010 was very high at \$385.00. They claim that they talked to the landlord about this and realized that the trailer and farm were also connected to their usage and they were paying for this also. The tenants state the main house has a sub meter and the landlords subtract their usage from the main meter to determine what the tenant's Hydro usage is. The tenants claim the trailer was occupied from February to August, 2010 and they have been paying for that farm workers power. They also state even when it was not occupied during the winter months the landlord still had power going to it.

The tenants state the landlord did deduct \$20.00 a month for four months for electricity used by the occupant in the trailer. However, they state if she has accepted that this is the cost of the power usage for the trailer then she should deduct this amount for the whole year not just four months. The tenants also state they should only pay for their own usage and not the landlord's

Residential Tenancy Branch
Ministry of Housing and Social Development

calculations for their usage as they never had sight of the actual bills for Hydro. The tenants have provided a receipt from the landlord which states they owed \$229.02. On this receipt the landlord was documented that she has deducting \$10.00 for gas idling, \$25.00 for power failure, \$37 for values and \$80.00 for allowance for the trailer, \$45.00 for the fence and the total owing is now \$122.02. The landlord has also documented that this sum was paid in full.

The tenants seek to recover the sum of \$400.00 for a loss of privacy and quiet enjoyment of their rental property. They testify that the original advertisement for this property states that it comes with a garden and own lawn. The tenant's testify that the landlord has allowed her farm workers to dig up the lawn at the rear of the property within 12 feet of their house and were allowed to weed a garden bed at the front of the property without providing 24 hours written notice to enter the property. The tenants state this was an invasion of their privacy and the landlord has not acted respectfully with regard to allowing her farm workers to enter their yard space.

The landlord testifies that the tenants received a credit of \$25.00 for \$10.00 of gas used and they had the bonus of the generator if the power failed. The landlord states she should not be responsible to reimburse them for half the delivery charge as she could have had the gas line going directly to her meter and then the tenants would not have had the use of the generator.

The landlord testifies that the information concerning the normal Hydro usage did state it was between \$40.00 and \$70.00 a month. She states the total amount of Hydro used by the tenants for the year was \$847.88. She states this shows the cost for the year was not excessive and came almost within the estimated amount. She states the tenants have paid \$694.00 for their share of the power and owe another \$240.00. The landlord states the male tenant always read the meter with her or read it himself and gave her the readings. They agreed at the start of the tenancy that this was what they would do.

The landlord states that the garden and lawn mentioned in the advertisement for the property referred to the front garden and lawn. She allowed the tenants to use the rear area as this was

Residential Tenancy Branch
Ministry of Housing and Social Development

deemed to be common garden area with no boundaries as the property is a working farm. The landlord states this is a common area she does not have to give notice to the tenants to do any work in this area. The landlord states she had the responsibility to weed the front flower bed and as such one of her farm workers carried out this work between 07.00 and 07.45 on the day in question. She states the tenant did not seem to be upset by this at the time as she even offered the farm worker a beer. The landlord argues that the tenants were aware that this was a working farm and there would be farm workers around. She argues that at no time would this constitute a loss of their peace and quiet enjoyment.

Both parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

The landlord submitted some additional evidence by fax machine after the hearing had concluded. As the hearing had ended this evidence has not been considered.

Analysis

I have carefully considered all the documentary evidence before me, submitted prior to the hearing, and the affirmed evidence of both parties. With regard to the tenants claim for compensation due to them having to pay the entire amount for the gas delivery service when everyone living on the property benefitted from this, I find the tenant arguments hold some weight that this delivery charge should be shared between the landlord and tenant as both parties benefitted from the gas in the event the power failed. However I find from the landlords receipt presented by the tenants that they have been given some compensation of \$15.00 for gas used and this will be deducted from their claim. Therefore, I find in partial favor of this section of the tenants claim to the sum of \$56.76 pursuant to section 67 of the *Act*.

With regard to the tenants claim that they paid the Hydro costs for the trailer without their knowledge at the start of the tenancy, as it was connected to their meter; I find this section of the tenants claim to be upheld. A tenant should be made aware in advance of a tenancy starting what other units are connected to their meter. With this in mind I find the tenants have already

Residential Tenancy Branch
Ministry of Housing and Social Development

received a reduction of \$20.00 per month for four months and are therefore only entitled to receive a reduction of \$20.00 per month for the remaining eight months of their tenancy to the sum of \$160.00 pursuant to section 67 of the *Act*.

With regard to the tenant's claim of \$400.00 for the loss of quiet enjoyment of their rental property, I find the tenants have not provided sufficient evidence to support this section of their claim. There is no evidence to show the back lawn area was part of the tenant's rental property and not common area as suggested by the landlord and the tenants admit the landlord was responsible for weeding the flower beds and as such was entitled to do so. The Residential Tenancy Policy Guidelines # 6 say temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. It is necessary to balance the tenant's right to quiet enjoyment with the landlords' right and responsibility to maintain the premises. Therefore, it is my decision that there would have to be sufficient interference or ongoing discomfort or inconvenience by the landlord to breach the covenant of quiet enjoyment and in this case the tenants have not proven that this took place. Therefore, this section of the tenants claim is dismissed.

As the tenants have been partially successful with their claim I find they are entitled to recover half their filing fee from the landlord to the sum of \$25.00 pursuant to section 72(1) of the *Act*. A Monetary Order has been issued for the following amount:

Compensation for gas delivery charge	\$56.76
50% of filing fee	\$25.00
Total amount due to the tenants	\$241.76

The tenants seek an Order for the landlord to comply with the *Act*, regulations or tenancy agreement. I find the tenants have not presented sufficient evidence to show that the landlord has not applied with the *Act* or regulations and there was no written tenancy agreement in place. Consequently I find this section of the tenants claim is dismissed.

Conclusion



Dispute Resolution Services

Page: 6

Residential Tenancy Branch
Ministry of Housing and Social Development

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$241.76**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The remainder of the tenants claim is dismissed without leave to reapply.

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: October 20, 2010.

Dispute Resolution Officer