



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to the tenant's application for dispute resolution seeking:

1. A monetary order for compensation for damage or loss in the sum of \$7,336.56;
and
2. Recovery of the filing fee paid for this application.

All parties appeared at the hearing and gave evidence under oath.

Issues(s) to be Decided

Has the tenant met the burden of proving her claims and is she therefore entitled to the orders sought?

Background and Evidence

The evidence is that this tenancy began on June 1, 2005 and ended on May 31, 2010. The tenant says part-way through the tenancy she discovered that the cost of heating/lighting in the barn and outbuildings on the property were added to her own billings although she was only to be responsible for utilities in the rental unit home that she used. The tenant says she estimates that this resulted in her paying \$3,574.55 extra for utilities over the course of the tenancy.

In addition the tenant says that she had to endure employees and equipment attending on the property and this resulted in a loss of her quiet enjoyment of the property. The tenant says these employees showered in the barn bathroom and this added to her utility costs. For this loss of quiet enjoyment the tenant claims \$3,000.00.

Further the tenant says she painted and made improvements to the rental unit totalling \$760.12 which she would have to have refunded.

The landlord testified that rental unit is a home located on a working orchard/farm and that there has always been pickers and equipment coming and going. The landlord submits that the tenant rented the property with this knowledge and that she accepted these conditions and in fact remained as a tenant on the property for 5 years.

With respect to the additional utilities the landlord says they only electricity used in the barn is to operate a clock. The landlord says the bathroom in the barn is non-functioning and the tenant is aware of this because she turned the water supply to the barn off herself. The barn is used to store machinery and chemicals and uses no power except for the clock. The landlord submitted a letter from a local electrical and data contractor who advised that the clock draws about 4 VA @ 120 volts single phase at 24 hours a day using about 7 cents per KWHR which would amount to less than 1 cent per day for usage. To this end the landlord offered the tenant \$120.00 as compensation for any loss she may have had with respect to the utilities.

With respect to improvements the landlord testified that that any improvements done to the rental unit were done without discussion or permission. The landlord says one of the improvements the tenant made was to add a hot tub without his permission and this jeopardized the rental unit's electrical system and is the real reason for her large electrical bills.

Analysis

With respect to the claim for loss of quiet enjoyment I find that the tenant rented a home on a operational orchard and she stayed on the property for 5 year, she now claims loss for those 5 year in the sum of \$3,000.00. I find that having agreed to rent a home on a property that included an operational orchard the tenant knew or ought to have known that there would be pickers and farm equipment coming and going on the property. If the tenant did not wish to have to endure this sort of activity she should not have rented a home located on the same land as an operational orchard but, having done so, she has accepted the nature of the rental unit and is not entitled to loss of quiet enjoyment therefor.

With respect to the utility costs, the testimony of the tenant and the landlord are conflicting. The tenant says she incurred extra costs on her own utility bill in order to pay for utilities in the barn. The landlord says this is not the case. The onus or burden of proof is on the party making the claim. When on party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Finally, with respect to the improvements, the landlord testified that he did not authorize any improvements or agree to reimburse the tenant for improvements and the tenant has supplied insufficient evidence to show that the landlord authorized her to make improvements to the property and that he agreed to reimburse her for those improvements.

Conclusion

Overall the tenant's applications are dismissed.
