

DECISION

Dispute Codes: CNLC, CNL, MNDC, FF

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Manufactured Home Park Tenancy Act* for an order to cancel the notice to end tenancy. The tenant also applied for compensation for loss under the *Act*. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The notice to end tenancy was served on the tenant on November 28, 2009 with an effective date of November 30, 2010. At the start of the hearing the tenant informed me that she had moved out on October 15, 2010. Accordingly, the tenant's application to cancel the notice to end tenancy is irrelevant and hereby dismissed. Therefore, this hearing only dealt with the tenant's application for a monetary order for compensation for loss under the *Act*.

Issues(s) to be Decided

Is the tenant entitled to \$140.00 for the cost of hay that she was unable to utilize and for \$3000.00 for loss of quiet enjoyment due to construction activity on a neighbouring lot?
Is the tenant entitled to the recovery of her filing fee?

Background and Evidence

The tenancy started in 2004. The rental unit consists of a single pad located on a section of the landlord's property. The pad rented for \$375.00 and the tenant also rented a pasture, attached to the pad, for her horses for an additional amount of \$125.00. The total area that the tenant rented was fenced off. The landlord's property extended beyond the fenced rental area and measured approximately eight acres in size.

The tenant stated that she had a verbal agreement with the landlord that allowed her to use the entire eight acres of land owned by the landlord for the purpose of grazing her horses. The tenant installed a fence on the far end of the landlord's property and utilized the entire property through the tenancy. The tenant filed photographs that the landlord referred to while testifying. He pointed out the area that was included in the rent and was separate from the remainder of the property. The tenant used the entire property for her horses but did not pay any additional rent.

The landlord decided to build his home on the property and on November 28, 2009, he served the tenant with a notice to end tenancy for landlord's use of property with an effective date of November 30, 2010. The tenant accepted the notice. At the hearing the tenant testified that at the time the landlord served the notice, he did not have the relevant permits in hand. However, the tenant did not dispute the notice within fifteen days of receiving it.

The tenant stated that the landlord removed the fence at the end of the property to prepare for the construction work and therefore she was unable to use the area for her horses and had to move the horses out of the area. The tenant stated that she had bought hay for the horses but was unable to utilize the hay. The tenant is claiming \$140.00 towards the cost of the hay but has filed an invoice for \$30.00 dated September 25, 2010.

The landlord argued that the area that was rented to the tenant was fenced and that he did not remove that fence. He removed the fence on the remainder of his property, so that the construction vehicles could access the property. The tenant stated that she had a verbal agreement with the landlord's brother about the area used by the horses. The landlord denied that there was any verbal agreement.

On July 18, 2010, the construction work began. The tenant stated that the workers conducted their work from 7 a.m. to 8 p.m. and caused noise disturbances.

The tenant filed a log of the days and times that work went on. Her log shows that the work started no earlier than 7:00a.m. and ended no later than 8:00 p.m.

The log shows that work went on between 8:00 a.m. and 4:00 p.m. on almost all days. The tenant did not notify the landlord about any problems other than one instance of fireworks by the workers. The landlord directed the workers to refrain from using fireworks. The landlord stated that the tenants were very friendly whenever he came by and he had no idea that they were being disturbed by the ongoing work as they did not make any such complaints to him.

Using the photographs filed by the tenant, the landlord pointed out that there was a considerable distance between the tenant's rental pad and the construction site. He stated that he allowed mounds of dirt to remain between the two areas, to minimize workers access to the rental property and to function as a sound barrier.

Analysis

The tenant stated that she had a verbal agreement with the landlord which allowed her use of the entire property that her rental pad was located on. The landlord denied this. In the case of verbal agreements, I find that when verbal terms are clear and when both the landlord and tenant fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

Moreover, it is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the tenant, has the onus of proving, during these proceedings, that the claim is justified. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail

For this reason, I am not prepared to interpret the terms of the verbal agreement and therefore I find that the landlord was justified in removing the fence to conduct construction work in the area of his property that did not include the rental pad. Accordingly the tenant's claim for \$140.00 for hay must be dismissed.

The tenant has applied for compensation for loss of quiet enjoyment. In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. Such interference includes intentionally removing or restricting services to the tenant.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

The tenant stated that the noise disturbances started on July 18, 2010. The tenant agreed that except for one instance of fireworks, she did not make any complaint to the landlord regarding noise disturbances. Based on the verbal testimony and evidence filed by both parties, I find that the construction work was carried out during daylight hours on the area of the property owned by the landlord and located at a reasonable distance from the rental unit. I find that the tenant has not proven that the noise disturbances were ongoing and deliberate on the part of the landlord.

I find that the tenant may have been inconvenienced by the presence of construction vehicles and construction activity, but temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Accordingly, I find that the tenant has not proven her case for compensation for the loss of quiet enjoyment and therefore must also bear the cost of filing this application.

Conclusion

The tenant's application is hereby dismissed in its entirety.

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: December 14, 2010.

Dispute Resolution Officer