

Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, RR, FF

<u>Introduction</u>

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; a monetary order; and a rent reduction.

The hearing was conducted via teleconference and was attended by the tenant, the landlords and their legal counsel. The landlords had arranged for a witness to be available but he was never called to provide testimony.

During the hearing, the landlords did not verbally request an order of possession should the tenant be unsuccessful in his Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property; to a monetary order for compensation for damage or loss; for a rent reduction for services and facilities agreed upon but not provided and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

Both parties provided a copy of a document entitled Agreement for Shared Occupancy, signed by both parties on January 23, 2013. The document includes terms related to the occupancy and exclusive use of the rental unit; shared common space and obligations and responsibilities of the tenant for upkeep of all lawn areas on the property and for occasional periods, when the landlords are away from the property, that the tenant will be responsible to care for the residence; animals and property, including all out buildings.

Page: 2

The agreement stipulates the tenant will have exclusive possession of the rooms above the garage and the adjacent sundeck with some furnishings for a monthly rent of \$900.00 plus a \$15.00 utility charge for a freezer payable in advance of the 1st day of each month beginning on March 1, 2013. The tenant, however, by agreement moved into the rental unit early.

The agreement also stipulates that some of the included tenant responsibilities when the landlord is away from the property for a period of time are for the tenant to care for 4 sheep, 3 goats, including feeding, milking and trimming their hooves, 99 layer hens, give or take, and 6 outdoor cats.

The landlord submits that as a result of vehicle accident on February 14, 2013 he sustained injuries that have impacted his ability to care for both his business providing marine services and the farm where the residential property is located. The landlord has provided a copy of the police investigation report of the accident; medical confirmation of his condition and limitations; and correspondence to some of his marine services customers regarding his change in circumstance.

The landlord has also provided a copy of correspondence with his son who has agreed to move back to the property care for the farm. The landlord submits his son intends to move into the rental unit. As a result the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 16, 2013 with an effective date of May 31, 2013 citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member.

The landlord testified that the work he intends for his son to take care of is not related to the work the tenant is responsible for under the Agreement for Shared Occupancy. The tenant does not dispute the landlord's medical condition or the intention of the landlord's son to move into the rental unit, however he submits that the landlord has additional motives for ending the tenancy.

The tenant submits that the landlord is does not want to have the rental unit fall under the jurisdiction of the *Act* and that the rental unit does not comply with local bylaws for secondary suites and as such the landlord is hoping to end the tenancy. The tenant provided substantial documentation on these issues, consisting primarily of email correspondence between the parties, and provided extensive testimony on these as examples of the landlord's reasons for wanting to end the tenancy.

Page: 3

The tenant submits that the reason the landlord has called their tenancy agreement an Agreement for Shared Occupancy is precisely to his point that the landlord is trying to avoid the *Act*. He also submits that despite the landlord's submission of occupancy permits the rental unit does not comply with local bylaws and that the permits are likely for the landlord's home. The tenant has provided no additional evidence in support of this claim. The tenant submits that if he is unsuccessful in his Application to cancel this Notice he will be reporting this to local authorities, however if he is successful he will not.

The tenant submits that the landlord's refusal to sign a receipt for the payment of rent that included the word "rent" and used the word "accommodation" instead prompted his worker with the Ministry of Social Development to be suspicious of the tenant. The tenant feels that because of this the Ministry contacted the landlord against his instruction and because the landlord has a tendency to elaborate they likely told the Ministry worker things that would support his position but the Ministry will not provide this information.

The tenant also submits that there were some issues related to information found in his clipboard regarding the legal use of marijuana. The tenant suggests that the landlords found this information and despite his explanation that he had been prescribed marijuana he has tried it and chosen not to pursue it as a course of treatment because it does not agree with him. The tenant believes this is an issue for the landlord.

The tenant also submits that the landlords had refused him the ability to make money from the sale of goat milk. The landlord submits that the Agreement for Shared Occupancy stipulates the tenant's obligations as it relates to caring for and milking of goats in the landlord's absence but does not provide for compensation to the tenant.

The tenant submits that through email discussions that occurred after the Agreement was signed the landlord had agreed that he could profit from the sale of goat milk. The tenant has provided copies of email correspondence between the parties discussing these issues but has provided no evidence to support that a supplementary agreement was made.

<u>Analysis</u>

While the care and milking of goats on the property is listed in the Agreement for Shared Occupancy as an obligation the tenant has in relation to the tenancy, I find there is no evidence provided that includes any compensation to be provided to the tenant other than being able to rent the rental unit at a monthly rent of \$900.00.

Page: 4

In addition, if the parties agreed to compensation for any work on the landlord's farm or property I find that the compensation is related to work product and not the tenancy and is therefore outside of the jurisdiction of the *Act*. I therefore decline jurisdiction on this portion of the tenant's Application.

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse intend, in good faith, to occupy the rental unit.

In relation to the tenant's claim that the landlord has additional motives for ending the tenancy I refer to Residential Tenancy Policy Guideline #2 which stipulates that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated in the notice to end tenancy.

While the tenant submits that he does not dispute the landlord's intent to have his son move into the rental unit he believes the landlord is trying to avoid being governed by the *Act* and local bylaws related to secondary suites.

I find the tenant has provided no evidence to establish how these indicate an ulterior motive. I find that the Agreement for Shared Occupancy contains most of the required Standard Terms of a tenancy agreement. I find the landlord's issuance of rent receipts that state for accommodation instead of rent is simply a matter of choice and in essence the document remains a rent receipt. The tenant has provided no evidence to show how these issues relate the landlord's motives in ending the tenancy.

The tenant has provided no evidence to substantiate that how the Ministry of Social Development confirmed his shelter information or why they would contact his landlord was out of the ordinary or has any impact on the landlord's intentions or motives for ending the tenancy.

In regard to the specific incident the tenant raised regarding the use of marijuana, I find, based on the tenant's submission of email correspondence, that the landlord was, above all else, understanding of the issue; engaged in discussion with the tenant; and once all information was on the table concluded the issue and moved on.

Policy Guideline #2 also states that if evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose.

I find based on the tenant's lengthy written submissions and testimony that he has presented no evidence at all that would suggest that the landlord has any motive other than the need to have his son move back to the property to manage the family farm. I am satisfied that the functions required for the management of the farm are distinctly different than those identified as obligations for the tenant under the tenancy agreement, which were short term in nature and mostly required when the landlord was away from the property.

As I have found there is insufficient evidence to show an alternate purpose and the tenant does not question the landlord's intent to have his son move into the unit, I find the landlord does not have a dishonest purpose and the landlord intends to end the tenancy and is acting in good faith.

Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety without leave to reapply and find the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on March 16, 2013 to be valid and effective.

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: May 1, 2013

Residential Tenancy Branch