



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, MNDC, FF

Introduction

This hearing dealt with 2 applications by the tenants for an order setting aside a notice to end this tenancy and a cross-application by the landlords for an order of possession and a monetary order. Both parties participated in the conference call hearing.

The tenants filed their first application on June 7 and because they were called out of town for employment, they were unable to serve that application on the landlords. The tenants then filed an identical claim on June 28, which they served on the landlords. The landlords acknowledged having received the June 28 claim and evidence and the tenants acknowledged having received the landlords' cross-application and evidence, which were filed on July 4.

Issues to be Decided

Should the notice to end tenancy be set aside?
Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began a number of years ago. The rental unit is a house on an acreage on part of which the landlord's agents plant hay.

The parties agreed that on May 30, the landlord served the tenants with a one month notice to end tenancy for cause, which alleged that the tenants had placed the landlords' property at serious risk.

The landlords alleged that the tenants mowed a strip through the middle of their hayfield, which required the landlords to reseed the area. The tenants denied having mowed the strip and stated that they were not at the property on the weekend when the damage occurred. The tenants testified that the fields are accessed by others,

providing a photograph of a truck, 2 quads and a dune buggy which they say is representative of outsiders who access the property. The landlords alleged that the tenants are responsible to restrict access to outsiders while the tenants stated that because there are multiple access sites, they cannot exercise such control.

The landlords alleged that on several occasions, the tenants' horses had escaped the fenced area where they were kept and had wandered into area which was reserved for the use of the landlords' agents. The tenants acknowledged that the horses had escaped on occasion, but stated that they had made efforts to keep fences repaired in order to keep the horses in and when the horses had escaped, they retrieved them immediately.

The landlords alleged that the tenants have cut firewood on the acreage and provided photographs showing trees which had been cut. The tenants denied having cut firewood on the land and again referenced the easy access to others.

The landlord testified that the tenants had on occasion camped on the edge of the hayfield and said that they feared that it created a fire hazard. The tenants acknowledged having camped in the area but stated that the landlord had on occasion sat with them while camping and had coffee, never mentioning that it was an issue.

The landlord's written evidence contained a number of allegations, including parking an RV in areas which the tenants did not rent.

Analysis

Although the tenants did not serve the landlords with a copy of their June 7 application, I find that as it was identical to the June 28 application, the June 7 application served to preserve the tenants' rights to ensure that their dispute of the notice to end tenancy was filed within the proper timeframe.

The landlords bear the burden of proving that the tenants have placed the landlord's property at significant risk. After having reviewed the oral, written and pictorial evidence, I am not persuaded that the tenants' activities represent a risk, significant or otherwise. It appears that the tenants have taken liberties in accessing parts of the residential property with the landlords' tacit approval for a number of years and that this approval has only recently been withdrawn.

While the tenants' actions may be annoying, I am unable to find that there is any real risk to the landlords' property. The only activity which might be characterized as risky is camping near the hayfield, but as the landlords did not deny that they have on occasion

had coffee with the tenants while they were camping in the area in question, I find that the landlords gave their silent approval by that action. If the landlords wish to hold the tenants to the strict terms of the oral agreement regarding which areas they may freely access, they should put that requirement in writing so the tenants have notice that they are reverting to the original agreement.

I find that the landlords have failed to prove that they have grounds to end the tenancy and accordingly I dismiss their claim for an order of possession. I order that the notice to end tenancy be set aside and of no force or effect. As a result, this tenancy will continue.

After the hearing concluded, I realized that I had failed to address the landlord's monetary claim. I note that in their application, the landlords provided no details of their claim as is required under the Residential Tenancy Rules of Procedure and would not have been able to deal with it in any event for that reason. The landlords' monetary claim is dismissed with leave to reapply.

As the tenants have been successful in their claim, I find that they are entitled to recover one, but not both, of the filing fees paid to bring their application. The tenants may deduct \$50.00 from the next rent payment due to the landlord.

I note that at the hearing, the landlords advised that they had refused to accept July's rent from the tenants as they did not wish to risk reinstating the tenancy. As the tenancy will be continuing, the tenants should immediately pay and the landlords accept rent for July.

Conclusion

The landlords' claim for an order of possession is dismissed without leave to reapply and the landlords' claim for a monetary order is dismissed with leave to reapply.

The notice to end tenancy is set aside and the tenants may deduct \$50.00 from the next rental payment due to the landlord.

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: July 16, 2013

Residential Tenancy Branch

