



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MT, DRI, MNDC

Introduction

This hearing dealt with two related applications. One is the landlords' application for an order of possession and a monetary order. The other is the tenant's application disputing a rent increase, a monetary order, and an order allowing her more time to file an application to dispute a notice to end tenancy. When asked, the tenant said she also intended to apply for an order setting aside a notice to tenancy for non-payment of rent but had omitted to check that square on her application for dispute resolution. The landlords said they understood that the tenant was disputing the notice and had responded to that claim in their material. Both parties acknowledged receipt of the other party's evidence.

Issue(s) to be Decided

Is the 10 Day Notice to End Tenancy dated March 9, 2014 valid?

Are either the landlords or the tenant entitled to a monetary order and, if so, in what amount?

Background and Evidence

This tenancy commenced November 1, 2010 as a seven month fixed term tenancy and has continued thereafter as a month-to-month tenancy. There is a written tenancy agreement. The relevant provisions of the agreement states:

- The monthly rent is \$700.00.
- The rent is due on the first day of the month.
- Water, stove and oven, refrigerator, carpets and window coverings are included in the rent.
- Electricity, heat, storage and garbage collection are not included in the rent.
- A security deposit of \$350.00 was paid by the tenant.

The rental unit is a three bedroom cabin located on a rural property beside a lake. Also located on the property is an open pole barn and a shed, referred to by the parties as the boat house. The cabin is heated by a combination of wood stove and electric

baseboard heaters. All the appliances in the unit are electric. The water system is located in the lower level. The landlords have a 500 watt 220 volt heater in the lower level to keep the water system from freezing. The landlord testified that the heater has a thermostat which is set at a low temperature.

The landlord testified that in the spring of 2011 they spoke to the tenant about her continuing her tenancy on a full time basis. The parties agreed that the tenancy would continue and the rent would be \$800.00 per month. The tenant testified that the landlords just told her the rent was being increased and there was no discussion or agreement. Both parties agreed that nothing was done in writing and that the tenant has been paying \$800.00 per month since June 1, 2011.

According to the landlords' records the rent has been paid irregularly. When they reviewed their records it appeared that there may have been some months in the fall and winter of 2012/13 when the tenant did not pay any rent. However, during this same period the female landlord was recovering from a fall which resulted in a severe concussion. Conscious of the fact that the fall and resulting injuries may have affected her memory and other mental faculties during this period the landlords did not insist on this point.

The tenant did some work for the landlords in February 2014 and was credited \$200.00 for that work. The tenant has not made any other payment for rent in February, March, April or May.

On March 10, 2014 the landlords served the tenant personally with a 10 Day Notice to End Tenancy for Non-Payment of Rent. The tenant filed this application disputing the notice on March 13.

The landlords testified that when they showed the property to the tenant they told her they would be storing their own possessions in the lower level and boat house. The tenant testified that the lower level and boat house are part of the rental unit and that the landlords kept promising to give her the keys to both areas, but never did. Both parties testified that the tenant was never shown the lower level and has never been it nor has she ever been given the keys to the lower level or the boathouse.

The tenant claims \$2200.00 as compensation for the damage done to items she stored in the pole barn. She argues that if she had been allowed the use of the basement and boathouse she would have been able to store her items securely and they would not have been damaged. According to her photographs, most of the items in the pose barn were stored in cardboard boxes or plastic bags. The tenant did not file a detailed

inventory of the items she claimed were damaged or any information about their value, other than a general estimate.

The tenant testified that they had an oral agreement that she would be able to use the canoe locked in storage in the pole barn. The landlords say they never agreed that the tenant could use the canoe. The landlords removed the canoe sometime after the start of the tenancy.

The tenant testified that she did not know about the heater in the lower level for the first two years of this tenancy. It is acknowledged that the electricity is included in the B C Hydro bill, which is the tenant's responsibility. The tenant claims compensation in the amount of \$100.00 per month for 39 months, a total of \$3900.00, for the electricity used by the heater.

The tenant filed copies of her hydro bills. They show that her hydro expenses for a sixteen month period were as follows:

Sept 13/12 to Nov 13/12	\$120.69	(\$64.85/month)
Nov 14/12 to Jan 14/13	\$292.29	(\$147.15/month)
Jan 15/13 to Mar 13/13	\$392.52	(\$196.26/month)
Mar 14/13 to May 13/13	\$166.19	(\$83.10/month)
May 14/13 to July 15/13	\$172.32	(\$86.16/month)
July 16/13 to Sept 11/13	\$154.61	(\$77.31/month)
Sept 12/13 to Nov 14/13	\$263.10	(\$131.55/month)
Nov 15/13 to Jan 15/14	\$339.94	(\$169.97/month)

The tenant claims that the wood stove requires repairs; she brought the issue to the landlords' attention; and they refused to fix it. She says that because the stove was not operating correctly she had to use four extra cords of wood each year for the past three years. She is claiming \$1200.00 calculated at \$100.00/cord X 12 cords.

The landlords say the stove was in good condition at the start of the tenancy; the tenant never told them the stove required repairs; and in their area you can buy a cord of firewood split and delivered for \$130.00/cord. He further testified that based upon the tenant's photographs the repairs that appear to be required are simple and he is prepared to do them, if the tenant will let him in the rental unit.

The tenant claims \$480.00 compensation for the landlords' failure to provide her with a dump pass. She says that for the past tow years she has had to take her garbage to a different dump which is further away from her home. She says that each trip costs her an extra \$10.00 in gasoline so she is claiming four trips/month X 25 months for a total of

\$480.00. She says she told the landlords they had to get the pass for her; they say they told her that if she had any trouble getting a pass to call them, which she never did.

The tenant claims \$200.00 for the cost of a refrigerator that she had to buy to replace the refrigerator that had quit working. She landlords say the tenant never told them she had a problem with the refrigerator and that if she had, they would have replaced it with a refrigerator they have on hand.

Finally, the tenant claims a return of all rent paid since the start of this tenancy for the landlords' failure to comply with the act, regulation or tenancy agreement. In addition to the claims described above the tenant claims that the landlords came onto the property illegally thereby causing a loss of her right to quiet enjoyment.

In her written material the tenant says the landlord came onto the property over ten times in the past three years. In her oral testimony she said it was six to twelve times a year. In his testimony the landlord said he went to the property about twelve times in the past four years to access the lower level of the house and the boat house. He said he always called ahead. The parties agree that the landlord has only been in the upstairs of the cabin on one or two occasions and that was only at the invitation of the tenant.

There was an episode on East Monday when the landlord tried to give the tenant written notice of entry and the tenant refused entry. There was a dispute about the exact interpretation and application of the law.

Analysis

The tenant filed her application disputing the notice to end tenancy within five days of being served with it. Accordingly, the application for more time in which to file her application was unnecessary.

Section 43(1) of the *Residential Tenancy Act* states that a landlord may impose a rent increase only up to the amount:

- calculated in accordance with the regulations;
- ordered by an arbitrator, pursuant to an application; or,
- as agreed to by the tenant in writing.

There is no question that the increase was not calculated in accordance with the regulation nor was it ordered by an arbitrator. Even if the tenant agreed to the increase verbally that is not sufficient for the legislation. Accordingly, the rent increase collected since June 2011 was illegal. The monthly rent is the amount specified on the written

tenancy agreement, \$700.00. The landlords have collected \$3200.00 more rent than they should have.

As there was no rent owed on the date of the 10 Day Notice to End Tenancy for Non-Payment of Rent it was not a valid notice and must be set aside. The tenancy continues in accordance with the terms of the tenancy agreement and the legislation.

Section 43(3) states that if a landlord collects a rent increase that does not comply with the legislation the tenant may deduct the increase from rent or otherwise recover the increase. The tenant has only paid \$200.00 towards the rent since February 1, 2014, and has continued to live in the rental unit. This amounts to \$2600.00 to be applied to the amount owed to the tenant by the landlords. The tenant has a remaining credit of \$600.00 to be applied to the June rent.

Section 7(1) states that if a landlord or a tenant does not comply with the Act, regulation or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

Section 7(2) requires any party claiming compensation for damage or loss that results from the other's non-compliance with the act, regulation or tenancy agreement to do whatever is reasonable to minimize the damage or loss.

The tenant's claim for damage to items stored in the pole barn is dismissed as the lower level of the cabin and the boat house were not included in the rent paid by the tenant. Not only does the tenancy agreement says that storage is not included but the fact that the tenant was never shown either area when she looked at the property nor was she ever given the keys to those areas is consistent with the landlords' testimony that those areas were not included in the rental unit.

It is clear that the sum of \$100.00 per month for the hydro costs of the heater in the lower level is just a number picked out of the air. The tenant's records show that her monthly hydro bill over a sixteen month period ranged from a high of \$196.26/month in the winter of 2013 to a low of \$64.85/month in the fall of 2012. There is no way that one electric heater – in a house will all electric appliances and electric baseboard heaters –

used one half of the tenant's electrical consumption in the coldest part of the year or more than the monthly consumption in the warmer parts of the year. Further, the tenant benefits from having an uninterrupted water supply in all seasons of the year. However, the rent does include water and the landlords should bear the costs associated with supplying the water. In the absence of any evidence about the actual costs of operating this heater I award the tenant general damages in the amount of \$100.00 for this item.

The landlords are only responsible for costs that may have resulted from the inefficient operation of the wood stove if the tenant can establish that she told the landlords about the required repair and they failed to repair the stove. The only evidence that the need for repairs was brought to the landlords' attention is the conflicting oral testimony of the parties. There is no evidence, such as a written request for repairs, to tip the balance of probabilities in the tenant's favour. Accordingly, this claim is dismissed.

The same difficulty exists with the tenant's claim for replacement of the refrigerator. There is only conflicting oral testimony as to whether she notified the landlords about any problems with the refrigerator provided with the rental unit and no evidence of the actual cost of this refrigerator. This refrigerator is the property of the tenant and she may take it with her whenever she moves out of the rental unit.

Pursuant to the terms of the tenancy agreement the tenant is responsible for the costs of garbage removal. Accordingly her claim for compensation for costs associated with hauling her garbage to a different dump is dismissed. However, to promote a good landlord/tenant relationship the landlords should take whatever steps they can to assist the tenant in obtaining a dump pass.

The written tenancy agreement does not state that the tenant is to have the use of the canoe. Accordingly, failure to provide the tenant with use of the canoe is not a breach of the tenancy agreement.

With regard to the issue of illegal entry by the landlords I find, based upon the tenant's written submission and the landlords' written and oral testimony, that the landlord came onto the property three or four times a year and never entered the rental unit itself improperly. I also accept the landlords' evidence that they called before coming to the property. The evidence is also clear that when entry became an issue the landlords did follow the proper procedure by posting a written notice to enter and then waiting until the fourth day after before attempting to inspect the rental unit. To establish a claim for loss of quiet enjoyment the tenant must establish that the landlord entered the rental premises frequently, or without notice or permission, and the evidence does not do that.

Accordingly the claim by the tenant for reimbursement of all rent paid to date is dismissed.

Conclusion

The 10 Day Notice to End Tenancy for Non-Payment of Rent is set aside and is of no force or effect. The tenancy continues in accordance with the tenancy agreement and the legislation.

I find that the tenant has established a total monetary claim of \$3300.00 comprised of an overpayment of rent in the amount of \$3200.00 and \$100.00 compensation for hydro usage.

Section 72(2) provides that if an arbitrator orders a party to a dispute resolution proceeding to pay any amount to the other party the amount may be deducted:

- in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
- in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

\$2600.00 is applied to the rent due to May 31, 2014. The balance of \$700.00 may be deducted from the rent due on June 1, 2014. Thereafter the tenant must pay the sum of \$700 on the first day of the month. The parties are reminded of the provisions of section 47(1)(b) of the *Residential Tenancy Act* and are directed to *Residential Tenancy Policy Guideline 38: Repeated Late Payment of Rent* for an explanation of the interpretation and application of that section.

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 09, 2014

Residential Tenancy Branch

