



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenants, an advocate for the tenants and the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for the landlord to comply with the *Act*?

Background and Evidence

The parties agree that this month to month tenancy started on February 23, 2013. Rent for this unit was \$1,375.00 per month which increased to \$1,405.25 on April 01, 2014. The landlord has made a \$5.00 reduction in the rent since April for any Hydro used by the landlord gate. The parties agree that a previous hearing was held on January 28, 2014 in which the parties came to an agreement. Part of this agreement was that the parties mutually agreed to end the tenancy on June 30, 2014 and the landlord was issued with an Order of Possession for that date. The tenants also agreed that for the duration of the tenancy they will ensure their guests from the VHB family will have no contact with the landlord. The tenants also agreed to withdraw their application that was set for a hearing on February 11, 2014.

The tenants advocate testifies on behalf of the tenants and says that since the last hearing the landlord has breached the covenant of quiet enjoyment for the tenants. This is due to events that have occurred since the last hearing and are not related to past events from the tenants' previous file that they withdrew. The tenants advocate testifies that there have been a series of incidents that have occurred since January 28, 2014 as follows:

- The day after the last hearing the landlord reduced the tenants' garbage service. The garbage collection is part of the rental agreement and was always 10 to 14 days as needed. The landlord has now reduced this to a monthly collection as part of a campaign to force the tenants to vacate the unit. The landlord had provided the tenants with garbage bins however on January 29, 2014 the landlord entered the tenants yard took the garbage bags from the bins and removed the bins.
- On March 09, 2014 the landlord turned off the tenants' electricity without notice. The landlords were observed leaving the barn where the electrical switches are located. When the tenants told the landlord their power was off the landlord GM's

response was “good”. About 10 to 15 minutes later the landlord DM returned to the barn and restored the tenants’ electricity.

- The property had a camera pointing at the drive and at the last hearing the landlord agreed to remove this camera. However the landlord just relocated the camera and it is now pointing at the tenants’ home. The landlord has also installed a second camera which is directed at the tenants’ home and even looks into the tenants’ bathroom.
- On March 22, 2014 the landlord started to deposit manure in the tenants compost bin. When the temperatures began to raise this attracted flies. The tenants only use this compost bin for household compost.
- The landlord entered the tenants’ premises on two occasions without proper notice. On January 31, 2014 the landlord came up onto the deck of the rental unit to take photographs of where the tenants were moving their horses too. On February 03, 2014 the power to the landlords’ gate went down. The breakers for this are located in the rental unit. The landlord sent the tenants an email stating they were coming into the rental unit and then proceeded to do so a few minutes later before the tenants had the chance to respond. This was not an emergency as there is another gate the landlord could have used to exit their property. This would have taken the landlord across the tenants’ property but would have been less invasive then entering the tenants’ home. The tenants were particularly stressed by the landlord entering their home as only days before the police had been called because the landlord had taken the tenants electric fence used for their horses and the landlord was now entering the tenants’ home unsupervised.
- The landlord has sent emails to the tenant and the tone of these emails has been accusatory with one in particular being scornful of the tenants parenting skills in

connection with the tenants allowing their son to have a toy gun. The tenants were outraged by this accusation.

The tenants advocate testifies that the landlord has been abusive and intimidating creating a hostile environment for the tenants in an effort to force the tenants to move out. The landlord has consistently disregarded the requirements of the *Act* for example by sending the tenants a rent increase notice above the allowable amount and then only rectifying this to the allowable amount of 2.2 percent by email and entering the rental unit without notice.

The tenant's advocate testifies that each breach of the *Act* when taken individually may appear to be minor but when taken together they constitute a bigger issue and this has resulted in the tenants' loss of quiet enjoyment of their rental unit. The tenants are only staying in the unit until the end of June as agreed at the previous hearing so their young son can finish the school year in his present school.

The tenants' advocate testifies that the electricity for the barn and the landlord's gate is paid for from the tenants' Hydro bills. The tenants seek to recover \$25.00 a month for the additional Hydro used in the barn for the duration of the tenancy less 16 months which the landlord has paid. The tenants also seek to recover Hydro for the gate at \$5.00 per month as the landlord only started to rebate this on April 01, 2014.

The tenants seek compensation of \$5,000.00 in total including the additional Hydro costs.

The landlord disputes the tenants' claims the landlord testifies that there is proof that the tenants were given a rent rebate of \$25.00 per month during the tenancy and the first rent receipt indicates that this is for the barn and the gate. The landlord testifies that the only month's the tenants did not get this reduction of \$25.00 was for September and October when the landlord did not use the barn. The landlord testifies that the hydro to the barn was turned off on March 01, 2014. Therefore for April and until the end of the

tenancy the tenants have had their rent reduced by \$5.00 per month for the small amount of Hydro used to operate the landlord's gate. The landlord testifies that consequently the landlord does not owe the tenants any amount for Hydro.

The landlord disputes the tenants' claims concerning a loss of quiet enjoyment. The landlord testifies that they are entitled to have cameras on their property to protect the landlords from violence from the tenant (MP) and from the theft of the landlords' property. The landlord claims that the tenants have stolen a feed container, bales of hay from the landlords loft and two full length boards that the tenant (AP) used to construct a basket ball hoop for their son. The landlord testifies that other items have also gone missing such as screws and tools until the landlord painted all her tools red. The tenants were the only ones that had access to the barn and on one occasion the landlord caught the male tenant rummaging through the landlords lumber section in the barn. The landlord testifies that neither camera is pointing directly at the tenants unit.

The landlord testifies that the garbage collection has always been carried out monthly. The garbage cans belonged to the landlords and as the tenants had abused these they were removed by the landlords.

The landlord testifies that the day the tenants power went out the landlords had gone to the barn as their electrician had asked them to look at the electrical feed so BC Hydro could change the feed over. When the landlords pulled down the lever to open the box this disconnected the tenants' power. The landlords did not realize this and the power was only out for five minutes until the landlords went back to the barn to push the lever back up which reconnected the tenants' power.

The landlord testifies that the pile of compost has been used for horse manure for six years. The tenants also put their horse manure on this compost pile. The landlord testifies that she was cleaning up some horse manure to take to another pile however the handle of the wheelbarrow broke and so the landlord put three loads of manure on the tenants compost pile.

The landlord testifies that the reason she entered the tenants deck was not to take photographs of the tenants removing their horses. The landlord was there to serve the tenants with a Live Stock Lean which is a legal document. The landlord testifies that she was videoing herself serving this document on the tenants' door. The landlord agrees they did enter the tenants' property to turn on the breaker to the landlords' gate. The landlord testifies that the tenants must have turned the breaker off to the gate and the landlords needed to exit their property to get to work. When they could not open the gate the landlord went home and sent the tenants an email stating that they were entering their home to turn the power back on. The landlord testifies that she videoed them flipping the breaker back on.

The landlord disputes that the tone of her emails could cause distress. The tenants had allowed their son to have a gun and the landlords reply to the tenant was to inform the tenant that because her son was firing the gun around the landlord's horses when the landlord was in the paddock this could potentially cause the death of anyone in the padlock if the horses bolted.

The landlord testifies that she did remove the tenants' electric fence as part of the Live Stock Lean Act. Because of this the tenant came onto the landlords' property with a Police Officer. This Officer had no just cause to enter the landlords property and should have buzzed at the gate first. The landlord disputes that she has created a hostile environment. The landlord testifies that since the parties had reached an agreement at the last hearing the landlord thought that this was the end of the hostility. All the landlord wants to do is to run her farm business and all the tenants have to do is pay their rent.

The landlord testifies that the tenants broke the barn rules by coming onto the landlords property to the barn often late at night with strangers. This violated the rules and jeopardized the landlords' security. The landlord testifies that she had no intention of evicting the tenants but just wanted their horses removed due to the damage done by the horses. Now the tenants are attempting to extort money from the landlords for a situation that had been resolved at the previous hearing.

The tenants advocate cross examines the landlord and ask if the other gate leads to the street why did the landlord not use that gate instead of going into the tenants unit to turn the power back on. The landlord responds that the other gate also leads onto the tenants' rental property.

The tenants' advocate testifies that if the tenants had tripped the breaker to the gate to be malicious it would have happened more than once. The tenants' advocate testifies that he was at the property when the tenant AP was building the basket ball net and the tenant did not use two lengths of the landlords' wood but rather scrap wood. The tenants' advocate refers to the tenants' photographic evidence showing the former and new location of the cameras and states that these show that the cameras are pointing at the tenants' home.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

With regard to the tenants claim for a loss of quiet enjoyment of the rental unit; I refer the parties to s. 28 of the *Act* which states:

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Policy Guideline #6 provides more guidance on this matter and says, in part, that historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had 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 for the purposes for which they were leased.

The tenants have the burden of proof in this matter to show that the landlord have subjected the tenants to frequent and ongoing interference by the landlord, Such interference might include serious examples of:

- entering the rental premises frequently, or without notice or permission
- unreasonable and ongoing noise;
- persecution and intimidation;
- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or
- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

The landlords have disputed the tenants' claims with the exception that they have put up a second camera to protect the landlords' safety and theft from the landlords property and that they did enter the tenants' property on two occasions. As explained to the parties during the hearing, the burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence

to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I will therefore consider each section of the tenants claims separately as follows:

The tenants have insufficient evidence to show how regularly the garbage collection had occurred prior to the landlords removing the garbage bins and informing the tenants that garbage will be collected monthly. I find that garbage is included in the rent and as such the landlord has continued to collect the tenants' garbage. There is no mention in the tenancy agreement that the landlord will provide garbage bins to the tenants and as such I am not prepared to order the landlord to do so. There is nothing in the legislation governing this tenancy that states how often garbage must be collected, However if the garbage was to become a health issue then I suggest the tenants put it in writing to the landlord and request that there garbage is removed on a more frequent basis.

Furthermore by restricting the garbage collection to once a month I do not find any cause for a loss of quiet enjoyment as specified under the *Act*.

The tenants claim the landlords deliberately turned off their power for 10 to 15 minutes. The landlord has testified that the tenants' power was off for five minutes and was restored quickly as soon as the landlords realized that they had not reconnected the power when they looked at the feed to the box. I find that this action was remedied as soon as the landlords were made aware that they had shut of the tenants' power and this would not constitute persecution and intimidation. I have insufficient evidence that the landlords intentionally removing or restricting services or that service was cut off. I am satisfied that the landlords' explanation of the events surrounding the temporary loss of power is equally probable.

With regard to the tenants claim that the cameras are located in a position that is directed at the tenants property and even their bathroom window; the landlords dispute this is the case and have testified that the tenants unit is not in the sightline of these cameras. The tenants have provided photographic evidence showing the location of

these cameras; however I am unable to determine from these photographs whether or not the tenants unit is in the view of the cameras. While I accept that this could be construed as an invasion of the tenants privacy if the cameras are pointing directly at the tenants unit or into the bathroom window; without sufficient evidence to determine this I am able to make a finding in this matter. **I do however caution the landlord** that for the duration of the tenancy the landlords must review any footage from these cameras and if the tenants' unit can be seen from either of the cameras then the cameras must be moved away from the tenants' unit.

With regards to the situation with the tenants' compost; the landlord has contradicted the tenants' testimony in which the tenant testified that the compost was only used for household compost and not manure. The landlord testified that it has been used for manure for the last six years. However whether or not this compost was used for the last six years or not the compost is located on the tenants' rental property and therefore the landlord must desist from depositing any items including manure on this compost. I do not however find this cannot be considered frequent or ongoing persecution or intimidation as it has only occurred on one occasion when the landlords wheel borrow was damaged.

With regard to the landlords entry into the property without proper Notice as required under the *Act*; a landlord is entitled to enter a rental property for the purpose of serving legal documents to a tenant. The landlords' versions of events as to why the landlord was on the tenants' porch are plausible and therefore I do not find this has broken the covenant of quiet enjoyment for the tenants. However I find the reason given by the landlord for entering the tenants' rental unit has breached the *Act*. A landlord must not enter the unit without first serving the tenants with a 24 hour written notice giving the date and time of entry and the reason for entry. The reason given by the landlord would not constitute an emergency as required under the *Act*. If the landlords had used the other gate to exit the property when their gate would not open, this would have been far less invasive then entering the tenants' home. However as this unauthorised entry only occurred on one occasion I am not prepared to make a finding that this has broken the

covenant of quiet enjoyment for the tenants. **I do however caution the landlords** that they must not enter the tenants' rental unit without proper notice being issued. A Notice sent by email is also not considered to be a written notice. The landlord is only entitled to enter the rental unit in an emergency situation that protect life or property. **I also caution the landlords** that they must not enter property that the tenants rent with the exception of there being an emergency to protect life or property or for the purpose of serving the tenants with a legal document.

With regard to the tenants concerns about the tone of the emails received from the landlord; I find there is a level of animosity between the parties for which both parties must take responsibility. While I find the tone of that email to be practically condescending I do not find other emails to be offensive but rather more businesslike reiterating the rules of the tenancy and discussions about the tenants' horse and use of the barn. While I have considered the tenants advocates testimony that each issue would not necessary be sufficient standing alone to breach the covenant of quiet enjoyment for the tenants. But taking all the incidents into account show a pattern of intimidation and disregard of the tenants and the *Act*, I am not satisfied that the events that have occurred are sufficient even put together for the tenants to proof that their quiet enjoyment has been sufficiently breached that would allow me to make a monetary award of just under \$5,000.00. The tenants application for a monetary Order for loss of quiet enjoyment is therefore dismissed.

I would strongly suggest, due to the animosity between the parties that the parties respect the distance between their homes for the duration of the tenancy and stay out of each other's way as much as this distance will allow.

With regard to the tenants claim to recover the additional cost of utilities for the barn and the landlord gate; I have reviewed the evidence before me and find that the tenancy agreement clearly states that rent is \$1,375.00 per month. One of the rent receipts shows that there is a reduction in the rent for the barn and gate hydro of \$25.00. The other rent receipts provided show that the tenants have paid the reduced amount of rent

of \$1,350.00 taking into account each month the reduction for the barn and gate hydro usage. Since March 01, 2014 the landlord has shut off the hydro to the barn as explained in one of her emails to the tenants. The landlord then continued to reduce the rent just for the hydro for the gate of \$5.00 per month. The tenants seek to recover an amount for the barn and gate and have testified that the landlord has only provided a discount for the gate since April, 2014 and for 16 months for the barn. From the evidence provided I am satisfied that the tenants were aware that the discount given of \$25.00 was for both the barn and gate as documented on the first receipt. I am not satisfied with the tenants evidence that the landlord owes the tenants any further discount as the tenants have insufficient evidence to show that the hydro to the barn was not cut off in March or that the landlord does not intend to honour the agreement of a \$5.00 discount up to the end of the tenancy for the power to the gate. This section of the tenants claim is therefore dismissed.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord must take heed of the cautions given in the analysis of this decision.

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: April 28, 2014

Residential Tenancy Branch

