



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OPC, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied for:

1. An Order cancelling a Notice to End Tenancy – Section 46;
2. A Monetary Order for compensation or loss - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on August 1, 2013. Rent of \$2,200.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$1,100.00 as a security deposit.

The Landlord states that the Tenants were given a one month notice to end tenancy for cause (the "Notice") by posting the Notice on the door on October 9, 2014. The reason for the Notice is repeated late rent payments. The Tenant states that they received the Notice either October 9 or 10, 2014. The Tenants made their application to dispute the Notice on October 21, 2014. The Tenants state that they have no evidence of anything that stopped them from making the application within the 10 days from receipt of the Notice as they thought that they had 10 working days to make the claim.

The Landlord states that the Tenants were late paying their rent for June, August, September and October 2014. The Tenants agree that no rent has been paid for November and December 2013. The Landlord asks for an order of possession effective December 8, 2014 and claims unpaid rent of \$2,200.00.

The Tenants state that prior to signing the tenancy agreement they knew that the Landlord's would be making repairs to the exterior of the house and would be renovating the basement unit. The Tenant states that they agreed to rent the unit while these repairs were being made as the Landlord had offered the Tenants the use of the suite once it was completed. The Tenant states that the Landlord agreed to rent the completed suite to the Tenants for an extra \$800.00 per month. The Tenant states that they understood the work would be started and completed in the spring of 2014 but that neither the exterior repairs nor the suite has been completed to date. The Tenant states that they were intending to use the suite for a bed and breakfast and placed an advertisement in March 2014.

The Landlord states that no time limit was ever given or placed on the exteriors repairs which were and are extensive and that the roof and landscaping was done by the fall of

2013. The Landlord states that the chimney was removed in august 2014. The Landlord states that the Tenants continually added to the work load.

Landlord states that the basement suite that existed at the time the Tenants entered into the tenancy agreement was not rented to the Tenants as part of the rental unit and that it required renovations before being rented. The Landlord states that the Tenant talked to the Landlord in January or February 2014 about renting the suite and that the work started in May or June 2014. The Landlord states that the Tenant asked to carry out the painting and other work so the Landlord asked for a quote which was not received by the Landlord until September 3, 2014. The Landlord states that by this time the Landlord had observed the Tenant's poor job done with pressure washing that the Landlord had paid the Tenant to carry out. The Landlord states that the work on the basement suite was subsequently required to be stopped as the Landlord had not obtained a permit for some of the work. The Landlord states that they offered the Tenants the use of the suite when completed for an increase on the rent. The Landlord states that the Tenants never once told the Landlord's to stop the renovations.

The Tenant states that in May 2014 the Landlord turned an area of the farm land adjacent to the unit into an RV parking lot without telling the Tenants. The Tenant states that they were only told that the area was going to be cleaned up in the future. The Tenant states that their view of farmland was changed and that they were constantly disturbed by the traffic and people parked there. The Tenant states that they also considered the adjacent farm land as part of their rental unit land. The Tenant states that they informed the Landlord of their disturbance but that the Landlord did nothing. The Tenant states that the RV parking stopped in October 2014. The Tenant claims compensation of \$13,200.00 reflecting the full rent paid for the month May to October 2014 inclusive.

The Landlord states that the adjacent farm lands are owned by the Landlord and that they are leased as farm land to a third party. The Landlord states that the area is separate from the rental unit and yard and is not part of the tenancy agreement. The

Landlord states that the Tenants were told about the hayfield and would know that a view would never be guaranteed given the cycle of hay growth and harvesting. The Landlord states that the Tenants were also told at the outset that at some point in the future there would be RV's parked in the one are of the hayfield. The Landlord states that when the Tenants complained about the RV park the Landlord contacted all of the parkers and was told that none of them had ever approached the Tenants or the yard with the exception of one person who attended a garage sale held by the Tenants.

Analysis

Section 47 of the Act provides that where a tenant does not dispute a notice to end tenancy for cause within 10 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Section 66 of the Act provides that a time limit may only be extended in exceptional circumstances. As the Tenant did not dispute the Notice within the time allowed and has no evidence of exceptional circumstances, I find that the Tenant has not substantiated on a balance of probabilities an entitlement to an extension and I dismiss the Tenant's claim for a cancellation of the Notice. As the Tenant must move out of the unit, I find that the Landlord is entitled to an order of possession effective December 8, 2014. Based on the undisputed evidence that November 2014 rent is unpaid, I find that the Landlord is entitled to **\$2,200.00**.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to reasonable privacy, freedom from unreasonable disturbance. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

The Tenant argues that their tenancy agreement includes either use or view of the adjacent farmland and that this restricts the Landlord's use of the adjacent farmland without their agreement. Given the photos of the land in question, noting the fencing and signs between the unit and the farmland and considering the Landlord's persuasive evidence that the Tenants knew that the land was not part of the tenancy agreement, I find on a balance of probabilities that the tenancy agreement did not include use of the adjacent farmland. While it may be true that a tenant might only enter into a tenancy agreement based on the view offered by the unit, as there is no term in the tenancy agreement that restricts the Landlord's use of the adjacent property, I find that the Tenants have not substantiated that the Landlord breached the tenancy agreement by changing their view.

While I accept that the Landlord did make enquiries of the RV parkers about their direct disturbance of the Tenants and that such direct disturbance likely did not happen, I can accept that the Tenants would still have been unreasonably disturbed by the nearby coming and going and presence of numerous people in large vehicles, particularly when I accept that they were not prepared for this when choosing their location for a rental and considering that it was their own Landlord enabling the disturbance. As the incursions were over a short period of time and considering that the Tenants still had full use of their unit, I find that the Tenants have substantiated an entitlement to a nominal amount of \$100.00 for each month the RV park was situated next to the Tenants unit. This amounts to **\$600.00**.

Based on the Tenant's evidence that they agreed at the outset of the tenancy to ongoing repairs during their tenancy, I find that the Tenant has not substantiated that the Landlord breached the tenancy agreement or Act by carrying out these repairs and I dismiss the claims for compensation in relation to ongoing repairs. As the Tenants have not shown any loss in relation to not being able to rent the basement suite, I dismiss the claims in relation to this area.

As each Party's application has met with some success, I decline to award the respective filing fees.

Deducting the Tenants entitlement of **\$600.00** from the Landlord's entitlement of **\$2,200.00** leaves **\$1,600.00** owed to the Landlord. Deducting the security deposit of **\$1,100.00** from this amount leaves a final amount of **\$500.00** owed by the Tenant.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on December 8, 2014.

I Order the Landlord to retain the security deposit plus interest of \$1,100.00 and I grant the Landlord an order under Section 67 of the Act for **\$500.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 04, 2014

Residential Tenancy Branch

