



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on February 11, 2015.

With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?
- b. Whether the tenant is entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenancy began on February 1, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$2200 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$1100 at the start of the tenancy. Neither party produced a copy of the written tenancy agreement. However, the tenant testified the issues raised in this hearing were not addressed in the tenancy agreement.

The tenant testified he rented the entire farm which is approximately 50 acres in size. The rental property includes the house, shed and barn as well as a paddock and blueberry farm area. The tenant testified he has three horses which are due to foal in the next couple of months. The tenant testified his enjoyment of the rental property has been unreasonably disturbed when the landlord's employees come onto the property to attend to the blueberry farm area. He stated the landlord did not attend to the blueberry farm last year. In the later part of December 2014, January 2015 and February 2015 the landlord's employees have come onto the property on a regular basis to access the blueberry portion and have caused a significant disturbance.

The landlord testified the farm is 35 acres in size. He testified the tenancy included the house, shed, barn and immediate surrounding area. It does not include the blueberry area which is some 6 acres away from the house. The landlord further testified they worked the blueberry area last year without the tenant complaining. He stated the reason the tenant now complains is because he does not have sufficient money to pay the rent.

Analysis

Section 28 of the Residential Tenancy Act provides as follows:

Protection of tenant's right to quiet enjoyment

28 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.

Section 29 of the Residential Tenancy Act provides as follows:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The evidence provided by both parties is not satisfactory. Neither party produced a copy of the tenancy agreement or maps to show the location of the various buildings, paddocks, roads and blueberry farm area. Despite the lack of evidence presented an arbitrator must do the best he can in the circumstances.

The written tenancy agreement does not set out what was included in the demised property. Neither party gave sufficient evidence as to what was discussed at the time the written tenancy

was entered into. I do not accept the submission of the tenant that the blueberry area was included as part of what he has rented. The tenant has not used that area. It is not reasonable that a farmer would lease the portion of the property that had established blueberry plants on it. After hearing the evidence presented I determined the blueberry area was not part of area rented. I determined the demised premises includes the house, shed, barn and areas of the property that are used for the pasturing of his horses. As a result I do not accept the submission of the tenant that he is entitled to a 50% reduction in rent because the landlord is not taking back the blueberry area. I also determined that an implied term of the agreement is that the landlord has the right to access the blueberry area but this does not include a right to unreasonably disturb the tenant while accessing the area.

I dismissed the tenant's claim to suspend or set conditions on the landlord's right to enter the rental unit. Section 29 applies to a landlord entering the **rental unit**. There is no evidence that the landlord has improperly entered the rental unit. It does not apply to entering the rental property. In any event, the landlord has the right to go onto the rental property to access the blueberry area in the back. However, if, in the process the landlord breached the tenant's right to quiet enjoyment, the tenant may be entitled to compensation.

Section 28 of the Residential Tenancy Act provides that the tenant is entitled to the quiet enjoyment of the property he has rented. The landlord has breached the tenant's right to quiet enjoyment by coming onto the tenant's property to access the blueberry area and causing significant disturbances in the process. The landlord failed to give the tenant notice. The landlord's employees have parked their vehicles on the road way used by the tenant to access his property and has hindered his ability to use the property. In the circumstances I determined the tenant is entitled to compensation in the sum of \$100 for December 2014 (reduced as the disturbances were not for the entire month), \$200 for January 2015 and \$200 for February 2015 for a total of \$500. It is premature to make an award for the loss of quiet enjoyment for March as the extent of the disturbances is not known. The tenant has liberty to re-apply for any loss of quiet enjoyment for March.

Conclusion

I dismissed the tenant's claim to suspend or set conditions on the landlord's right to enter the rental unit.

I ordered the landlord(s) to pay to the tenant the sum of \$500 plus the sum of \$50 in respect of the filing fee for a total of \$550 such sum may be deducted from future rent.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: March 04, 2015

Residential Tenancy Branch

