



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF, O

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; to recover the fee for filing this Application for Dispute Resolution, and for "other".

The female Tenant stated that on March 16, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On March 31, 2015 the Tenant submitted documents and black and white photographs, which are of poor quality, to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. On April 08, 2015 the Tenant submitted colour photographs of the black and white photographs that were submitted to the Residential Tenancy Branch on March 31, 2015.

The female Tenant stated that the documents and colour photographs were personally served to the Agent for the Landlord on March 31, 2015. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On April 02, 2015 the Landlord submitted documents and black and white photographs, which are of poor quality, to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that this evidence was served to the Tenant by express post on April 02, 2015. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

There was insufficient time to conclude the hearing on April 15, 2014 so the matter was adjourned. The hearing was reconvened on June 03, 2015.

There was insufficient time to conclude the hearing on June 03, 2015. Upon being advised that the hearing would be adjourned, the Agent for the Landlord stated that in

order to avoid further delay, the Landlord is willing to rely on the testimony that has been provided at the hearing on April 15, 2014 and June 03, 2015, in addition to documentary evidence relating to that testimony.

The Agent for the Landlord stated that she wishes me to make a determination regarding whether or not this tenancy should end on the basis of that evidence. The Tenant was not opposed to that position.

The Landlord was advised that if the proceedings were concluded on June 03, 2015 I would not be considering reasons for ending the tenancy that were not discussed at the hearings, even if the Landlord had made written submissions regarding those issues, as the Tenant had not had a full opportunity to respond to those allegations. The Agent for the Landlord stated that she understood and that she did not wish to discuss any other reasons for ending the tenancy at a subsequent hearing.

On the basis of the information provided by the Agent for the Landlord, these proceedings were concluded on June 03, 2015.

Both parties were represented at both hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter#2

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the Tenant's request to set aside the Notice to End Tenancy.

The balance of the Tenant's Application for Dispute Resolution is dismissed, with leave to re-apply. The Tenant retains the right to file another Application for Dispute Resolution in regards to problems with the tenancy.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on June 01, 2014 and that the parties signed a fixed term tenancy agreement, the fixed term of which ends on May 31, 2017.

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was posted on the door of the rental unit. The Agent for the Landlord stated that the Notice was posted on February 26, 2015 and the female Tenant stated she located it on that date.

The Landlord and the Tenant agree that the reasons cited on the Notice to End Tenancy for ending the tenancy were:

- that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord;
- that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk;
- that the Tenant has caused extraordinary damage to the unit or property;
- that the Tenant has not done required repairs of damage to the unit;
- that the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after being notified, in writing, to do so; and
- that the Tenant knowingly gave false information to a prospective tenant or purchaser of the unit/property.

The Agent for the Landlord stated that the Landlord wishes to end the tenancy, in part, because the Tenant is breeding and selling rabbits, chickens, and ducks, which she contends is not permitted under the tenancy agreement. A copy of the tenancy agreement and addendum was submitted in evidence.

Although there is nothing in the tenancy agreement that prohibits the Tenant from operating a business on the residential property, the addendum clearly specifies that the Tenant is "permitted the pets you arrive with: 4 goats, 2 pigs, 4 dogs, chickens, rabbits, 6 horses for the first month and then 3 will be permitted thereafter". The parties agree that the addendum was amended to permit 14 ducks and 2 parrots. The Agent for the Landlord stated that this term prohibits the breeding of animals.

The Agent for the Landlord stated that prior to the start of the tenancy the Landlord and the Tenant verbally agreed that the Tenant would not breed or sell animals. She stated that prior to the start of the tenancy the Landlord confirmed, via email, that a breeding business would not be conducted on the property.

The female Tenant stated that the parties did not discuss breeding prior to the start of the tenancy, either in person or by email. The Tenant submitted an email, dated July

22, 2014, in which the female Tenant informs one of the Landlords that she “does not remember talking about chicks or sales directly but I believe we talked about the incubators I sold and I mentioned to him that I hatched out some chicks as well. There was no specific conversation I can recall stating that I could not sell chicks (or would not) so I am not sure where this has come from”.

The female Tenant stated that when this tenancy began they brought approximately 100 chickens with them; that they have never had more than 100 chickens; and that she never had more chickens on the property than she had when the tenancy began. At the hearing on April 15, 2015 she estimated that she had 62 chickens on the date of that hearing and at the hearing on June 03, 2015 she estimated she had 58 chickens on the date of that hearing. She stated that they moved 12-13 rabbits onto the property at the start of the tenancy and that they still have the same amount.

The Agent for the Landlord initially stated that within the first week of the tenancy the Tenant had brought approximately 90 chickens and she subsequently stated that the Tenant brought approximately 60 chickens within the first week of the tenancy. She stated that she has observed up to 22 rabbits on the property, including baby rabbits.

Both parties submitted a copy of a letter, dated February 14, 2015, in which the Agent for Landlord declared that the Tenant currently has 75-90 chickens and that the Tenant only had 40-50 chickens when the property was inspected in September. The Tenant submitted an email response to that letter, dated February 14, 2015, in which the Tenant declared that when the property was inspected in September the Tenant reported having less than 100 chickens.

Both parties submitted a copy of a letter, dated September 28, 2014, in which the Tenant informed the Landlord that the Tenant has not been adding birds but has been selling them to “alleviate the complaints”. The Tenant declared that the Tenant has sold at least 10 roosters and several hens and that the Tenant will “comply with the laws in place (99 or less laying hens (not including roosters/chicks) and 200 or less total number as per TNRD bylaws)”.

The Landlord submitted a letter, dated September 28, 2014, in which the Landlord informs the Tenant that no additional chickens can be brought onto the property.

The Landlord submitted a letter from the Tenant, dated September 25, 2014, in which the Tenant declared, in part:

- that the Tenant “is not bound by our lease as to how many chickens are kept on the property”;
- that the Tenant currently has fewer chickens than when the Tenant moved onto the property;
- that the Tenant sold approximately 2/3 of her stock prior to moving onto the property.

The Landlord submitted a letter, dated September 18, 2014, in which the Landlord informed the Tenant that they would end the tenancy if several problems were not corrected, including adding chickens to the flock.

The Agent for the Landlord stated that she believes the Tenant is breeding and selling rabbits and chickens. She based this conclusion, in part, on her observations of young rabbits and chicks on the property at various times during the tenancy. The Landlord submitted photographs of animals the Landlord contends are baby rabbits or chicks; however those images are of such poor quality I am unable to make any reasonably determination regarding the age of the animal.

The female Tenant stated that she is not breeding or selling young rabbits or chicks. She contends that the small rabbits and chickens observed by the Agent for the Landlord are simply miniature breeds, not young animals.

The Agent for the Landlord stated that she believes the Tenant is breeding and selling rabbits and chickens in part, because she found two websites that advertise this business. The Landlord submitted documents printed from the websites.

The female Tenant stated that she operates two active websites, in which she advertises chickens and rabbits for sale, which she established four years ago. She stated that she sold rabbits and chickens from her previous location but she stopped breeding them when she moved onto this property. She stated that she is now only selling the animals that she brought to the property with her; she is selling incubators; and she is selling hatching eggs.

The female Tenant stated that she updated this website in 2015 for "copyright" purposes but she did not remove the references to selling chickens and rabbits because she just did not wish to take the time to do so.

The Landlord and the Tenant agree that when this tenancy began the parties discussed where the various animals were to be housed and that the chickens and pigs were not allowed to roam freely.

The Agent for the Landlord stated that the chickens are not penned on a regular basis and that they have been allowed to roam freely in the open floor area of the barn. Both Tenants stated that the chickens are not permitted to roam freely, although they acknowledge that they have, on approximately three occasions, escaped from the coop.

The Landlord submitted a letter, dated November 07, 2014, in which the Landlord declared that chickens are to be kept in the enclosed coop and not in the open floor area of the barn. The Tenant acknowledged that she received this letter after one of the chickens had escaped the coop and was found in the open floor area of the barn. She stated that a chicken escaped from the coop a couple of times before she located, and repaired, the hole in the coop.

The Agent for the Landlord stated that the pigs were observed roaming outside of their designated pen on several occasions, which was brought to the Tenant's attention in the aforementioned letter, dated November 07, 2014. In that letter the Agent for the Landlord declared the pigs were observed in the front yard between November 04, 2014 and November 07, 2014.

The female Tenant acknowledged that the pigs broke out of their pen in November of 2014; that the pen was repaired shortly after the letter of November 07, 2014 was received; and that the pigs have not been outside of their pen since the fence was repaired.

The Agent for the Landlord stated that the pigs have been outside of their pen on a regular basis between November 07, 2014 and December 17, 2014. She stated that she sent the Tenant a text message on December 17, 2014, in which she informed the Tenant the pigs were outside of their pen, and she has not observed them outside since that date. The Agent for the Landlord was unable to locate a copy of the text message in her evidence.

The Landlord submitted photographs which the Landlord contends show the chickens are outside of their coop; however those images are of such poor quality I am unable to make any determination regarding that claim.

The Agent for the Landlord stated that the Landlord wishes to end the tenancy, in part, because the Tenant has free-roaming ducks that are making a mess of the property.

The Landlord and the Tenant agree that:

- the Tenant did not have permission to keep ducks on the property at the start of the tenancy;
- the Tenant moved the ducks onto the property without informing the Landlord; and
- on September 26, 2014 the Landlord agreed, in writing, that the Tenant could keep 14 ducks.

The Agent for the Landlord stated that the Landlord agreed the ducks could roam freely but that they may have to be penned if the ducks make a mess on the property. The Tenant stated that the Landlord agreed to allow the ducks to roam freely and there was never a discussion that they would re-visit that issue if the ducks were a problem.

The Landlord submitted an email the Tenant sent to the Landlord, dated June 07, 2014, in which the Tenant assured the Landlord the ducks would not damage the property and that the Tenant would pen them if the Landlord does not like the "set up" when he visits in July .

The Landlord submitted a letter, dated February 14, 2015, in which the Agent for the

Landlord informed the Tenant that the ducks are flying and making a mess, and that they should no longer be allowed to roam freely after March 14, 2015. The letter informed the Tenant that the ducks could be penned in an area behind the barn. The Tenant acknowledged receiving this letter.

The Tenant submitted a letter, dated February 15, 2015, in which the Tenant advised the Landlord that they did not ask for the ducks to be penned behind the barn; that they could clip the ducks wings to prevent them from flying; and that they will "work on" enclosing them into the second garden area. In the letter she declares that she has not seen the ducks perching on wires, although she has seen them on wooden rails. In the letter she further declares that she has not noticed any duck manure on the house or windows; that the manure is falling on the ground; and in the spring she will assess the manure problem and correct it "if necessary". The Landlord stated that she did receive this letter.

The Landlord submitted a letter, dated February 25, 2015, in which the Landlord informed the Tenant that the Landlord has the right to notify the Tenant if terms of the agreement are not being followed and to ask that the infraction be rectified. The Agent for the Landlord stated that she posted this letter on the Tenant's door, at the request of the female Tenant.

The female Tenant stated that the ducks are still roaming freely on the property because she did not receive a response to her suggestion that the ducks could be enclosed in the second garden area. The Landlord contends the ducks are making a mess on the property and the Tenant contends that they have cleaned any mess made by the ducks when weather permits.

The Agent for the Landlord stated that the Landlord wishes to end the tenancy, in part, because the Tenant has too many horses on the property. The Landlord and the Tenant agree that they signed an addendum to the written tenancy agreement which declares, in part, that the Tenant may have "6 horses for the first month and then 3 will be permitted thereafter. Otherwise there will be a \$100.00 charge for each additional horse per month".

The Landlord submitted an email, dated May 25, 2014, in which one of the Landlords informs the Tenant that they can only have three horses and in which the Landlord informs the Tenant that they will be charged "\$100.00 per horse over 3 horses".

The female Tenant stated that they moved six horses onto the property; that they sold one of the horses in October of 2014; that they sold one of the horses on February 21, 2015; that they currently have four horses on the property; and that they have been paying the additional \$100.00 per "extra" horse since the second month of the tenancy. The Landlord does not dispute this evidence.

The Landlord contends that the \$100.00 monthly charge for "extra" horses was intended to be a short term solution and that the "extra" horses would be moved from the

property by August of 2014. The female Tenant stated that she understood she was expected to attempt to sell the "extra" horses but no time limit was established for removing the horses.

The Agent for the Landlord stated that the Landlord wishes to end the tenancy, in part, because the Tenant's horses have damaged several poplar trees on the residential property. The Landlord and the Tenant agree that the horses have damaged approximately fifteen trees.

The Agent for the Landlord stated that the horses have chewed the bark off the trees up to a height of approximately seven feet; that they have chewed off the small branches on the trees; and they have eaten into the wood of the trees. The Landlord submitted photographs of trees; however those images are of such poor quality I am unable to determine the extent of the damage. The female Tenant stated that she has not inspected the trees sufficiently to determine whether the horses have eaten into the wood or the small branches.

The Agent for the Landlord says the horses are still eating the trees. The female Tenant stated that the horses were eating the trees because they were hungry and they are no longer eating the trees because they are now being provided with a constant source of hay.

The Landlord submitted a letter, dated February 09, 2015, in which the Landlord informed the Tenant the trees were being damaged and that the trees should be protected by either removing the horses or fencing the trees.

The female Tenant acknowledged receiving the letter dated February 09, 2015. She stated that the Tenant has not fenced the trees in an effort to protect them because she believes the constant source of hay is sufficient to protect the trees from further damage. She stated that the Tenant was not aware the horses were damaging the trees until she received the letter dated February 09, 2015.

The Agent for the Landlord stated that the Landlord wishes to end the tenancy, in part, because the Tenant's horses have damaged approximately thirteen fence rails by chewing on them. The female Tenant acknowledged that the horses have damaged approximately thirteen fence rails.

The Landlord and the Tenant agree that the Landlord first informed the Tenant of the damaged fence rails in a letter dated February 14, 2015. The female Tenant stated that the damaged rail have been replaced sometime during middle or late May of 2015. The Agent for the Landlord stated that she has not inspected the fence recently to determine if the damaged rails have been replaced.

The Agent for the Landlord stated that the Landlord wishes to end the tenancy, in part, because the Tenants' horses have been chewing on posts that hold up the horse shelter. The female Tenant stated that she was not aware the horses have damaged

the posts. The Agent for the Landlord acknowledged that the damage to the posts has not been brought to the Tenant's attention.

The Agent for the Landlord stated that the Landlord wishes to end this tenancy, in part, because the Tenant is piling manure in a variety of areas that have not been approved by the Landlord. She stated that on September 26, 2014 the Tenant was told to pile the manure in two specific areas; that the Tenant is piling it in additional areas; and that none of the manure has been moved from the unapproved areas.

The female Tenant stated that sometime in November of 2014 they were told to pile the manure in two specific areas. She stated that they have been piling it in additional areas because they were unable to access one of the areas during the winter months; that in March or April they started clearing manure from the pastures and moving the manure that is piled in unapproved areas; and that she expects all the pastures to be cleared and the piles moved to the appropriate place in the next six weeks.

The Agent for the Landlord stated that the Landlord wishes to end the tenancy, in part, because the Tenants are storing hay and feeding the horses improperly. She stated that when this tenancy started the Tenants were told that they should store hay in the barn or at the top of the pasture and they should feed the horses in front of the horse shelter. She stated that in November the Tenants began feeding the horses by with large round bales of hay; that the bales are placed in a different location each time; that hay is being strewn across the property; that the hay is not being restricted to the highways right of way, and that the hay is creating an unsightly mess.

Both Tenants stated that they were not told where hay should be stored or fed until after the tenancy began, in part, because the horses were "free ranging" at the start of the tenancy. The female Tenant stated that they began feeding the horses hay in October of 2014, at which point they discussed where the hay should be stored and where the horses should be fed.

The Tenants acknowledge that the horses are being fed with large round bales of hay and that the bales are placed in various locations along a highways right of way, which is on the residential property. They do not agree that the hay is being strewn across the property or that it is an unsightly mess.

Analysis

Section 47(1)(h) of the *Act* authorizes a landlord to end a tenancy if a tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. The burden of proving that the Landlord has grounds to end this tenancy pursuant to section 47(1)(h) of the *Act* rests with the Landlord.

On the basis of the tenancy agreement and addendum submitted in evidence, I find that the Tenants were only permitted to keep the chickens and rabbits that were brought

onto the property at the start of the tenancy. Had the addendum read that the Tenants could have a specific number of chickens or rabbits, I find that the Tenants would be free to breed chickens or rabbits, providing the Tenants do not exceed that specific number agreed. In these circumstances, I find that the addendum explicitly prohibits replacing the original animals with new animals, (with the exception of cats), which prohibits the Tenant from breeding chickens and rabbits.

A material term of a tenancy agreement is a term that is so important to both parties that that a breach of the term gives the other party the right to end the agreement. I find that the term in the addendum relating to the number of animals permitted on the property is a material term. It was clearly of great significance to both parties, as they spent considerable time discussing the issue prior to the start of the tenancy and since the tenancy started.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant has been breeding chickens and rabbits. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that she has observed chicks and baby rabbits on the property or that refutes the female Tenant's testimony that the animals the Agent has observed are not babies.

I note that the photographs the Landlord submitted in evidence are of such poor quality they do not assist in determining this matter.

In determining there was insufficient evidence to conclude that chickens and rabbits are being bred on the property, I placed little weight on the evidence that the Tenant has two websites in which she advertises baby chickens and baby rabbits for sale. I find the female Tenant's testimony that the website is still active because she also sells incubators and that she has simply not updated it to remove the reference to breeding is plausible, as websites are often not updated on a regular basis. As the Landlord has failed to establish that the Tenants are breeding chickens or rabbits, I find that the Landlord does not have grounds to end the tenancy for that reason.

I find that the Landlord has submitted insufficient evidence to establish that the Tenants allow the chickens/pigs to roam outside of their coop/pen. While I accept the Agent for the Landlord's testimony that she has observed chickens in the open area of the barn occasion and pigs in the front yard, I find that the Landlord has submitted insufficient evidence to establish that this is a common practice. I find it entirely possible that the animals have escaped on occasion and that the Tenants have not, therefore, allowed the animals to roam outside of their coop/pen.

As the evidence shows the chicken coop and pig pen have been repaired, I find it unlikely that the chickens and pigs be outside of their coop/pen again on any regular basis and that this is, therefore, not grounds to end the tenancy. In reaching this conclusion, I was heavily influenced by the evidence that shows the Tenants made reasonable efforts to prevent the animals from escaping their enclosures.

On the basis of the undisputed evidence, I find that the Tenants moved ducks onto the property without the consent of the Landlord and that the Landlord subsequently agreed that the ducks could remain. On the basis of the testimony of the Agent for the Landlord and the email, dated June 07, 2014, I find that the Tenants offered to pen the ducks if they presented a problem as a result of roaming free.

On the basis of the undisputed evidence, I find that on September 26, 2014 the parties amended the tenancy agreement to indicate that 14 ducks could be kept on the property, although when they amended the agreement there was no mention of whether the ducks could roam freely or would be penned. As free roaming was not specifically discussed when the written agreement was amended, which was almost three months after they discussed the ducks via email, I cannot conclude that this issue was a significant concern to the Landlord. I therefore cannot conclude that manner in which the ducks were to be housed was not a material term of the tenancy and that the Landlord does not have the right to end the tenancy simply because the Tenants have refused to pen the ducks.

Section 47(1)(d) of the *Act* authorizes a landlord to end a tenancy if a tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; or put the landlord's property at significant risk. The burden of proving that the Landlord has grounds to end this tenancy pursuant to section 47(1)(d) of the *Act* rests with the Landlord.

Even if I were to accept that the Tenants have not been cleaning up duck manure in a timely manner, I cannot conclude that the manure places the property at risk, as there is no evidence that the manure will cause any long term damage. I therefore find that the presence of duck manure is not grounds to end this tenancy pursuant to section 47(1)(g) of the *Act*.

I find that the Landlord has submitted insufficient evidence to show that the quantity of the manure on the ground constitutes an unreasonable disturbance. Some manure is to be expected in a tenancy of this nature and, in the absence of photographs that establish the amount of manure is unreasonable; I cannot conclude that manure from the ducks constitutes an unreasonable disturbance. I therefore find that the Landlord has not established grounds to end this tenancy, pursuant to section 47(1)(d) of the *Act*, because duck manure is not being cleaned appropriately.

While I accept the Landlord's submission that the Landlord did not intend for the Tenants to keep more than three horses on the property for any extended period of time, I also accept the Tenants' submission that the Landlord did not clearly express how long the Tenants could keep the "extra" three horses on the property.

I find the addendum to the tenancy agreement is not clear on this issue. It merely states that the Tenants can have "6 horses for the first month and then 3 will be

permitted thereafter”, which is relatively clear. The subsequent sentence makes the issue less clear, by declaring that “otherwise there will be a \$100.00 charge for each additional horse per month”. This could be interpreted to mean that the Tenants are not prohibited from having three horses after the first month, but they must pay an additional charge for each horse.

The court held in *Derby Holdings Ltd. V. Walcorp Investments Ltd. 1986, 47 Sask R. 70 and Coronet Realty Development Ltd. And Aztec Properties Company Ltd. V. Swift, (1982) 36 A.R. 193*, that where there is ambiguity in the terms of an agreement prepared by a landlord, the contra proferentem rule applies and the agreement must be interpreted in favour of the tenant. I find the contra proferentem rule applies in these circumstances, and I conclude that the Tenant may have more than three horses on the property, providing the Tenant pays an additional \$100.00 per month for the fourth, fifth, or sixth horse.

As the Landlord has failed to establish that the Tenants are not permitted to keep up to six horses on the property, I find that the Landlord would not have grounds to end this tenancy on the basis that the Tenants has six horses, or less, on the property.

On the basis of the undisputed evidence, I find that the Tenants’ horses have damaged approximately fifteen trees on the residential property. I find that the Landlord has submitted insufficient evidence to establish that the damage to the trees can be considered significant, in part, because the photographs the Landlord submitted in evidence are of such poor quality they do not assist in determining the extent of the damage.

In determining there is insufficient evidence to conclude that the damage to the trees is significant, I find that the evidence suggests that the damage will not likely kill the trees. In making this determination I was heavily influenced by the letter submitted in evidence by the Landlord, dated February 09, 2015, in which the Landlord declares that further damage will kill the trees. As the Landlord has failed to establish the trees have been significantly damaged at this point, I find the Landlord does not have grounds to end the tenancy as a result of the horses eating the trees.

In determining this matter I was influenced by the female Tenant’s testimony that the horses are now being properly fed and will no longer eat the trees. The Tenants should be clearly aware, however, that if the horses continue to eat the trees it is highly likely that the Landlord will have grounds to end this tenancy.

Section 47(1)(g) of the *Act* authorizes a landlord to end a tenancy if a tenant does not, within a reasonable time, repair damage to the rental unit that is the result of the actions or neglect of the tenant. The burden of proving that the Landlord has grounds to end this tenancy pursuant to section 47(1)(g) of the *Act* rests with the Landlord.

On the basis of the undisputed evidence, I find that the Tenants’ horses damaged several fence rails, which was brought to the Tenants’ attention on February 14, 2015.

On the basis of the testimony of the female Tenant and in the absence of evidence to the contrary, I find that the damaged rails have been recently replaced. Given that the repair to the fence does not appear to be urgent, I find that the fence rails were replaced in a reasonably timely manner. In determining that the fence was repaired in a reasonably timely manner, I was influenced by the location of this rental and the practicality of delaying repairs of this nature until spring.

As the fence rails were replaced in a reasonably timely manner, I find the Landlord does not have the right to end this tenancy pursuant to section 47(1)(g) of the *Act*, as a result of the damaged fence rails.

On the basis of the undisputed evidence, I find that the damage the horses have allegedly caused to the posts holding up the horse shelter has not been brought to the attention of the Tenants. As the damage to the horse shelter had not been brought to the attention of the Tenants, I find that the Landlord does not have the right to end this tenancy as a result of the damaged horse shelter. Now that the damage to the shelter has been brought to the attention of the Tenants, the Tenants should be aware that failure to repair this damage, if it was caused by their animals, could result in an end to the tenancy in the future, pursuant to section 47(1)(g) of the *Act*.

I find that the location of manure piles cannot be considered a material term of this tenancy and the Landlord cannot end this tenancy, pursuant to section 47(1)(h) of the *Act*, because the Tenants are not piling the manure in places approved by the Landlord. In determining this is not a material term of the tenancy, I was heavily influenced by the undisputed evidence that shows the parties did not discuss the location of the piles until at least three months after the tenancy began. Had this been a material term of the tenancy, the parties would have, in my view, discussed the term prior to the start of the tenancy.

In the absence of evidence to show that the location of the manure is damaging the Landlord's property, I find that the location of the manure is not grounds to end this tenancy pursuant to sections 47(1)(g) of the *Act*. The Tenants should be aware if the presence of manure does cause damage to the property in the future, the Landlord could have grounds to end this tenancy.

While it is clear that the Landlord does not wish the manure to be piled in the areas selected by the Tenants, I cannot conclude that the location of the piles significantly interfered with or unreasonably disturbed another occupant or the Landlord. I find that the Landlord has submitted insufficient evidence to establish that the location of the manure piles is unreasonable for a rural property of this nature. I therefore find that the Landlord has not established grounds to end this tenancy, pursuant to section 47(1)(d) of the *Act*, because the Tenants are not piling the manure in places approved by the Landlord.

I find that where hay is stored or fed to the horses cannot be considered a material term of this tenancy and the Landlord cannot end this tenancy, pursuant to section 47(1)(h)

of the *Act*, because the Tenants are not storing/feeding hay in a manner approved by the Landlord. In determining this is not a material term of the tenancy, I was heavily influenced by the undisputed evidence that shows the parties did not discuss storage/feeding practices until at several months after the tenancy began. Had this been a material term of the tenancy, the parties would have, in my view, discussed the term prior to the start of the tenancy.

In the absence of evidence to show that the manner in which the hay is being stored/fed is damaging the Landlord's property, I find that this is not grounds to end this tenancy pursuant to sections 47(1)(g) of the *Act*.

I find that the Landlord has submitted insufficient evidence to show that the storage/feeding of hay has significantly interfered with or unreasonably disturbed another occupant or the Landlord. I find that the Landlord has failed to establish that the storage and feeding practices are unreasonable for a rural property of this nature. I therefore find that the Landlord has not established grounds to end this tenancy, pursuant to section 47(1)(d) of the *Act*, as a result of the storage/feeding practices.

After considering all of the evidence presented during the hearings, I find that the Landlord has failed to establish grounds to end this tenancy. I therefore grant the Tenant's application to set aside this One Month Notice to End Tenancy that was posted on the Tenant's door on February 26, 2015.

In determining these matters I was influenced, to some degree, by the colour photographs submitted in evidence by the Tenant, which do not demonstrate the residential property is messy or in a state of disrepair.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

As I have set aside the One Month Notice to End Tenancy for Cause, this tenancy shall continue until it is ended in accordance with the *Act*.

The Tenants have established a monetary claim of \$50.00 as compensation for filing this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Tenant to withhold \$50.00 from one rent payment, in full satisfaction of this monetary claim.

In an attempt to provide some clarity and stability to this tenancy, both parties are advised that:

- the Landlord, or any person designated by the Landlord to act as an agent, has the right to bring valid concerns about the tenancy to the attention of the Tenants;
- the Landlord may have the right to end this tenancy in the future if the Tenants

breach a material term of the tenancy agreement and do not correct it within a reasonable time after being notified, in writing, of the need to correct it;

- a material term is typically a term that is present at the start of the tenancy;
- a non-standard term of a tenancy agreement may only be added, removed, or changed with the consent of both parties;
- there is a term in the tenancy agreement that stipulates the Tenants are only permitted to keep the “pets” they “arrive with”, which I interpret this to mean that they cannot acquire additional animals, including any additional horses, unless they have the explicit consent of the Landlord;
- the Tenants have an obligation to maintain the property in a reasonable state of repair and to repair damage caused by the Tenants, the Tenants’ guests, or the Tenants’ animals;
- the Landlord may have the right to end this tenancy if the Tenants do not repair damage caused by the Tenants, the Tenants’ guests, or the Tenants’ animals; and
- the Landlord may have the right to end this tenancy if the manner in which the Tenants maintain the property in the future can be shown to have significantly interfered with or unreasonably disturbed another occupant or the Landlord, or put the Landlord’s property at significant risk.

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: June 09, 2015

Residential Tenancy Branch

