



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR

Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property, compensation for loss or damage under the Act, regulations or tenancy agreement and to recover unpaid rent or utilities.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the “hearing package”) by registered mail on June 18, 2015. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties present.

Further the Landlord submitted an evidence package to the Residential Tenancy Branch on October 9, 2015, but did not serve the Tenants with this evidence. Consequently I will not accept the Landlord’s evidence package date stamped October 9, 2015 as the Tenants were not served the evidence package and therefore the Tenants have not seen the evidence.

Issues(s) to be Decided

1. Is there damage to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation and if so how much?
3. Is there loss or damage and if so how much?
4. Is the Landlord entitled to compensation for the loss or damage and if so how much?
5. Is there unpaid rent or utilities?

Background and Evidence

The Tenants said the tenancy started on October 15, 2013. They indicated there were discussions about completing a written tenancy agreement but no written tenancy agreement was completed or signed. As a result this tenancy was a verbal month to month tenancy. Rent was \$2,000.00 per month payable on the 15th day of each month. The Tenant said the rent was designated as \$500.00 for the house and \$1,500.00 plus GST for the barn and property. The parties indicated there was no signed contract but this agreement was to be under one tenancy agreement or contract. The Tenants said they paid a security deposit of \$1,000.00 and a pet deposit of \$1,000.00 at the start of the tenancy. The Landlord said one deposit was for the house and one was for the barn. The Tenants made an application with the Residential Tenancy Branch for the return of their deposits and were awarded double the deposits in the amount of \$4,000.00 in a monetary order dated April 2, 2015. This tenancy ended on August 15, 2014.

The Tenants continued to say no move in or move out condition inspection reports were completed for this tenancy. The Landlord agreed that no condition inspection reports were completed and signed at the start or the end of the tenancy, but the Landlord insisted that the house had just been redone and the barn was clean. The Tenants said they left the house and barn in the same condition at the end of the tenancy as at the beginning of the tenancy. The Landlord said the house and barn were left in poor condition.

The Landlord said this tenancy was established to develop a goat dairy in the barn. The Landlord said the Tenants had milking goats in the barn and they were trying to establish a commercial goat dairy.

The Tenants said they rented both the house and the barn and the barn was to be used to milk goats. The Landlord submitted a rent receipt that shows the Tenant's name on it and the name of the goat dairy. The Tenant paid \$500.00 and the goat dairy paid \$1,500.00 in rent and \$75.00 in GST. The total amount on the receipt is \$2,075.00 and the receipt is dated April 14, 2014.

The Landlord said the because of the damage to the house and barn the Landlord has had expenses to repair the damage. The Landlord said she is claiming the following amounts:

1. Lawyer costs	\$1,900.00	
2. Barn Renovations	\$4,755.68	
3. Estimated Water bill	\$ 425.00	
4. Loss of Hay (estimated value)	\$3,000.00	
5. House cleaning	\$ 395.00	
6. Barn cleaning	\$ 600.00	
7. Barn repairs	\$3,000.00	
Total		\$14,075.68

The Tenants said the Landlord has not provided any evidence that proves her claims. The Tenants said there was no condition inspection reports completed and there is no tenancy agreement so there is no evidence that they were responsible for any of the Landlord's claims. Further the Tenants said they left the house and barn in as good condition at the end of the tenancy as they found it at the start of the tenancy. The Tenant said the Landlord's claims are not justified or proven.

Analysis

Section 4 of the Act says: This Act does not apply to

(a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,

(b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

(d) living accommodation included with premises that

(i) are primarily occupied for business purposes, and

(ii) are rented under a single agreement,

(e) living accommodation occupied as vacation or travel accommodation,

(f) living accommodation provided for emergency shelter or transitional housing,

(g) living accommodation

(i) in a community care facility under the *Community Care and Assisted Living Act*,

(ii) in a continuing care facility under the *Continuing Care Act*,

- (iii) in a public or private hospital under the *Hospital Act*,
 - (iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,
 - (v) in a housing based health facility that provides hospitality support services and personal health care, or
 - (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,
- (h) living accommodation in a correctional institution,
- (i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,
- (j) tenancy agreements to which the *Manufactured Home Park Tenancy Act* applies, or
- (k) prescribed tenancy agreements, rental units or residential property.

Both parties agreed this tenancy included a residence and a barn for housing and milking goats for commercial purposes. The rent receipt issued on April 14, 2014 confirms both parties testimony that the residence was \$500.00 per month and the barn was \$1,500.00 plus GST of \$75.00. Given that the barn was the primary element of the contract or tenancy agreement, I find this situation to be a commercial tenancy/contract and is not in the jurisdiction of the Residential Tenancy Act. Consequently, I do not have jurisdiction to make a finding in this matter. The applicant may want to seek legal advice to determine how to proceed with her claims.

In the absence of evidence to show that this situation is only a residential tenancy between the Applicant and Respondent the Residential Tenancy Branch does not have jurisdiction in this situation. I dismiss the application as I find no authority to decide this matter under the *Residential Tenancy Act*.

Conclusion

The application is dismissed for lack of jurisdiction

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: November 16, 2015

Residential Tenancy Branch

