Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OOPR, OPL, MNSD, MNR, CNL, MNDC, RP, AAT, RR, FF, O

Introduction

This hearing was set to deal with two related applications. One was the landlords' application for an order of possession based upon a 2 Month Notice to End Tenancy for Landlord's Use and/or a 10 Day Notice to End Tenancy for Non-Payment of Rent, a monetary order, and an order permitting retention of the security deposit in full or partial satisfaction of the claim. The other was the tenant's two applications for orders setting aside the 2 Month Notice to End Tenancy for Landlord's Use; compelling the landlord to make repairs to the rental unit; compelling the landlord to allow the tenant access to the rental unit; reducing the rent for repairs, services or facilities agreed upon but no provided; and other unspecified relief. As set out in the Interim Decision all three applications were heard together.

Issue(s) to be Decided

- Is the 2 Month Notice to End Tenancy for Landlord's Use dated January 27, 2016 valid?
- Should a repair order be made and, if so, on what terms?
- Should an order allowing access to the rental unit be made and, if so, on what terms?
- Should a rent reduction be ordered and, if so, in what amount?
- Should a monetary order be made in favour of the landlords or the tenant and, if so, in what amount?

Background and Evidence

The Rental Unit and the Landlords

The landlords, who are 70 and 65 years old, live on a 160 acre ranch in their own home. They operate a horse facility that caters to the race horse industry. At one time they had three full time employees but now it is just the two of them. They have reduced the number of horses boarding at the ranch fro 80 to 25 or 30. This spring they will have 15 "turnouts" for three months. The landlord explained that "turnouts" are less work and good money.

There are two other rental units on the ranch. One is the trailer that is the subject of these applications. It is a two bedroom, one bathroom unit. In the past it was used for staff accommodation. The unit has a wood stove as well as an oil heater.

The second is a small house, called the "bunkhouse", by the landlords. It is currently occupied by an acquaintance of the landlords. This person is a part-time resident. She is away part of

the year working or housesitting. This is her “home base”; she has no other permanent residence.

The Financial Arrangements at the Start of the Tenancy
This tenancy commenced September 1, 2014. The parties have an oral agreement. A formal move-in inspection was not conducted and a move-in condition inspection report was not completed.

The parties agree that the rent is $750.00 per month, due on the first day of the month, and that the rent includes hydro and satellite television. The also agreed that the oil for the oil furnace is not included in the rent.

The parties do not agree on the financial arrangements made at the start of the tenancy. The landlord says the tenant paid an initial deposit of $325.00 to hold the unit and $325.00 towards the first month’s rent. A couple of weeks later the tenant paid the balance of $400.00for the balance of the first month’s rent. The landlord said that they agreed that the tenant would do some work on the trailer before she moved in. The work was credited to the heating oil in the tank. According to the landlord, this meant the tenant paid a security deposit of $325.00.

The tenant says she did not pay a deposit to hold the trailer. The tenant says she paid the first month’s rent in one payment. She also says that they agreed the security deposit would be $350.00 and the pet damage deposit would be $100.00. The $400.00 credit for her labour was applied to the deposit and she paid the balance of $50.00 by cash. She subsequently paid $400.00 cash for the contents of the oil tank.

The parties agree that no receipts were given for any of the payments made by the tenant. The parties also agree that with the exception of February and March of this year the tenant has always paid the rent in a timely manner and in cash, and that no receipts were given by the landlords for those payments.

Wood
The female landlord testified that at the start of the tenancy they told the tenant that the male landlord would supply wood but they did not specify any particular quantity or quality. She testified that the wood is cut from their property and that they and the other tenant all burn the same wood.

The tenant testified that the first year the landlord delivered five rows of wood to her wood shed. She said that this year the landlord delivered significantly less wood. Further, the wood that was delivered is too green and punky to burn property, and is too large for her to split. She filed photographs showing wood stacked in the other tenant’s wood shed and in other locations on the ranch in support of her allegation that the landlords were reducing her wood delivery for an improper purpose.

The landlord responded that the other tenant cuts her own wood and that the previous occupant of the trailer filled up the woodshed, which is why there was so much wood in the shed at the start of this tenancy. She also argued that the tenant has another source of heat in the trailer; that she has burned wood at a prodigious rate; and they have less wood this year. She also pointed out that the next door neighbour sells cut firewood, delivered.

The tenant testified that the oil heater is noisy, smelly and hazardous. She has never used it. The tenant filed photographs of the heater. She argued that the lack of a maintenance sticker on the heater was proof that the heater has never been services. The tenant also said that she did not know the neighbour sold firewood and, in any case, she could not afford it.

The landlord testified that the trailer, including the oil heater, was inspected and received CSA certification ten or twelve years ago. She testified that it was serviced at the same time as they had their own furnace serviced, prior to the tenant moving in. She also said that the service company does not put stickers on any furnace, including their own, when they service them.

Heating Oil

The landlord testified that the previous tenant had filled the oil tank on his own account. She understood the cost to have been $800.00. When that tenant moved out he told the landlords that there was $400.00 of oil left in the tank. They took his word. They collected this amount from the tenant and passed the payment on to the previous tenant. Their position is that when this tenancy ends the amount of oil left in the tank can be measured and they will pay the tenant for the oil.

The tenant testified that at the start of the tenancy she did not measure the amount of fuel in the tank or take any other steps to verify that $400.00 was a fair price for the oil. Now, she questions whether the value of the heating oil was really $400.00. She says she has never used the oil heater and has not used any of the oil.

Mules

At the start of this tenancy the landlord agreed that the tenant could keep her two mules at the ranch for no charge. The landlords have made similar arrangements with previous tenants allowing them to keep their horses at the ranch for no charge. The landlord said she showed the tenant the paddock, the shed the tenant could use for storage, and a stall she could use. The landlord was clear that there was no charge for having the mules at the ranch because they were not providing any other services. The tenant was solely responsible for the care and feeding of the mules. The tenant agreed that she provides all the care for the mules.

When this tenancy was entered into the mules were at another location. Both parties understood that the mules would not be moved to this location until later in the year; which they were.

The landlord stressed that their arrangement was not a boarding contract. She testified that when horses are boarded on their ranch the horse owners sign a written contract and the landlords provide all the care for the horses.

Hay

The tenant has been buying hay from the landlords at what she says is a fair price. The male landlord has been putting round bales of hay in into the feeder. This winter the landlords gave the tenant written notice that they would no longer be selling her hay. The landlords say that because of last year's dry condition their hay harvest was down considerably and they do not have any surplus to sell to the tenant. The tenant says they have lots of hay and they have taken this action to harass her. She also complained that it was difficult to find another supplier of hay and the price she has paid is more than double what she was paying the landlords.

Snow Removal

The male landlord plows the yard. The tenant testified that the first winter he kept the yard and roads well plowed. However, this year has been a different story. When she asks him to plow he tells her she's living in the country, not the city. The tenant complains that the landlord refuses to plow the road to her trailer; the turnaround area, and the road to the mules. As a result it is difficult for her to access the trailer and to feed the mules. The tenant complains that the landlords have plowed for the other tenant but not for her.

The tenant filed a large volume of photographs showing snow, ice and mud. Most photographs show ruts in the snow, ice or mud of up to four or five inches. The photographs also show large piles of snow that have been pushed by a plow; clear areas under evergreens; and icy areas. In one photograph intended to show the worst conditions, the snow does not reach the bottom of the car's hubcaps.

Tires

The tenant claims that the unplowed conditions have caused damage to her tires and wheel alignment. She submitted an estimate for replacement of the back two tires plus a wheel alignment.

The tenant testified that she has the tires changed, rotated and balanced twice a year; the most recent occasion being in November. She testified that this is only the second winter she has driven on these tires.

The tenant testified that she has a 140 kilometer round trip commute to work and she usually makes that trip four times each week. She also makes trips to the local community on some of the other days of the week.

The landlord testified that their unpaved driveway is about 300 feet long. It is 18 kilometers of paved secondary highway from the end of their driveway to the main highway. There are two cattle guards or cattle gates on this highway. In addition, logging trucks on this road often

cause potholes. It is 55 kilometers on the main highway to the community where the tenant works. For the past three years, portions of the main highway have been under construction. The landlord argues that road conditions and high mileage could have led or contributed to any problems with the tenant's tires or wheel alignments.

The tenant responded that the landlord exaggerated the condition of the roads. The cattle guards do not cause a problem; she avoids the potholes; and the worst stretch of construction is about two kilometers long.

2 Month Notice to End Tenancy for Landlord's Use

The landlord's evidence is that as she and her husband have gotten older they are experiencing some health difficulties. The female landlord has had a heart attack, and has diabetes and high blood pressure. According to the medical statement filed by the landlords the male landlord has "significant degenerative disc disease and facet osteoarthritis of the lumber spine." The landlord's evidence is that they have to reduce their physical workload, reduce their stress, and get more help on the ranch.

The female landlord testified that at Christmas her adult children spoke to them about their situation. The options for the family appeared to be to sell the ranch or get more help. The landlords don't want to sell the ranch.

The landlord testified that their son, who is an artist and lives in the Lower Mainland with his family, wants to move to the ranch to help his parents and save money for adown payment for a home of his own. Their son used to help them with a previous horse operation and would be a knowledgeable and useful worker on the ranch. He has three children, aged seven, five and two years. Accordingly to the landlord he has already given notice to his landlord and the family will be moving as soon as the oldest child finishes pre-school.

The landlords' daughter filed a written statement that laid out the same sequence of events and the same plans.

On January 27 the landlord issued and served a 2 Month Notice to End Tenancy for Landlord's Use. The effective date of the notice is March 31, 2016.

The tenant questions the genuineness of the landlords' motives and points out the following:

- The notice was given after there had been numerous disputes between the parties about wood, hay, plowing and other topics and just days after she gave the landlords a lengthy letter of complaint.
- The male landlord is working continuously on the ranch; appears to love his work; and does not give any indication of slowing down physically.
- The rental unit itself is very small – only 48 feet by 12 feet – and is much too small for a family of five.

- There is no written statement or other testimony from the son as to his intentions.

The landlord responded that the timing was coincidental.

10 Day Notice to End Tenancy for Non-Payment of Rent

The tenant did not pay the February rent. On February 10 the landlord issued a 10 Day Notice to End Tenancy for Non-Payment of Rent and posted it on the door of the rental unit. The tenant wrote the landlords that she was withholding the rent until they provided her with a written tenancy agreement and other documents. In the hearing she testified that she understood she could withhold rent until the dispute was settled.

The tenant did not pay the March rent. The landlords issued and served a 10 Day Notice to End Tenancy for Non-Payment of Rent. The tenant paid the March rent within the five day time limit. The landlords gave her a receipt for the payment that specified it was being accepted for use and occupancy only.

Analysis

2 Month Notice to End Tenancy for Landlord's Use

Section 49(3) of the *Residential Tenancy Act* allows a landlord to end a tenancy if the landlord or close family member intends in good faith to occupy the rental unit. In determining whether the "good faith" requirement has been met an arbitrator must determine:

- Firstly whether the landlord truly intends to use the premises for the purposes stated on the notice to end tenancy; and,
- Secondly, that the landlord does not have a dishonest or ulterior motive as the primary motive for ending the tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish these two elements.

There are a number of elements of the landlord's evidence that are common in today's economy:

- Young families cannot save enough money for a down payment on a home without help from their parents; either by a cash contribution or a free place to live or both.
- As people age and/or develop health problems they are not able to continue the same level of physical activity as they have done in the past.
- Farm families do their best to keep their farms within the family.

The commonness of this situation lends credibility to the landlords' explanation for the notice.

There has been a great deal of conflict between the landlord and the tenant but the worst of it has occurred after the 2 Month Notice to End Tenancy was served on the tenant. It is after that date that the situation escalated from irritation to hostility. It is after this date that the tenant withheld payment of rent; the landlord withheld services; the tenant filed complaints with the RCMP and the SPCA, and so on. If all of this had occurred before the notice to end tenancy was served on the tenant that would have been a stranger suggestion that the landlords had an

ulterior motive for ending this tenancy. However, the exchange of letters between the landlords and the tenant prior to January 27 is not enough to convince me that the landlords had a ulterior motive as their principal reason for ending this tenancy.

I find that the 2 Month Notice to End Tenancy for Landlord's Use dated January 27, 2016 is valid. Section 68(2) allows an arbitrator to order that a tenancy ends on a date other than the effective date shown on the notice to end tenancy. In light of the circumstances of this case, including the dates of the hearing and this decision I order that this tenancy ends at 1:00 pm, April 30, 2016, and I grant the landlords an order of possession for that date.

A tenant whose tenancy is ended as a result of a 2 Month Notice to End Tenancy for Landlord's Use does not have to pay rent for the last month of their tenancy. Accordingly, I remind the parties that the tenant is not required to pay the April rent. If the tenant overholds into May she will be responsible for overholding rent.

The parties are reminded of the provisions of 51(2) which provides that if:

- steps have not been taken to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice; or,
- the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice;

the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

10 Day Notice to End Tenancy for Non-Payment of Rent

As the tenancy has been ended pursuant to the 2 Month Notice to End Tenancy for Landlord's Use no decision is required on the validity of the 10 Day Notice to End Tenancy for Non-Payment of Rent dated February 10, 2016.

February Rent

The tenant is responsible for the February rent in the amount of $750.00. In the haring the tenant undertook to pay the February rent. In case she has not I grant the landlord a monetary order in this amount. If the February rent has been paid this part of the order will be unenforceable. If it has not been paid the landlord may, pursuant to section 38(3) retain the security deposit and/or pet damage deposit in partial satisfaction of the claim and file the order in Small Claims Court to enforce collection of the balance.

Tenant's Claims for a Monetary Order

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.
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Section 7(2) of the *Act* requires any party who claims compensation from the other for damage or loss to do whatever is reasonable to minimize the damage or loss.

Wood

First of all, I find that the agreement between the parties was that the landlord would supply wood; not that the landlord would supply enough wood that the tenant would never have to use the oil heater. The tenant had an alternate source of heat and she had lots of fuel for that heater. The only evidence that the oil heater was not safe was the tenant's opinion. Further, there is no evidence that the tenant mitigated any possible damages. The tenant could have had the heater examined by a qualified repair person and filed that report as part of her evidence. She could have followed the procedure set out in section 33 of the legislation regarding emergency repairs, or the tenant could have filed an application with the Residential Tenancy Branch for a repair order. The tenant did not take any steps to mitigate her damages. Accordingly, no rent reduction for the lack of wood will be granted.

Fuel Oil

The tenant had the opportunity to ascertain the value of the contents of the fuel tank at the start of this tenancy but did not. There is no evidence that would allow me to conclude that the value of the fuel oil at the start of the tenancy was more or less than the $400.00 paid for it. At the end of this tenancy the tenant can arrange to have the contents of the oil tank measured by an independent fuel supplier and get the current price of fuel oil from the same source. The tenant bears the risk of any increase or decrease in value over the course of her tenancy.

Hay

The agreements between the landlord and the tenant regarding the provision of hay are separate from the tenancy agreement and therefore outside the jurisdiction of the Residential Tenancy Branch.

Snow Removal, Lack of Access and Tires

Section 32(1) of the *Residential Tenancy Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that:

- complies with the health, safety and housing standards required by law; and,
- having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
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Residential Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises sets out that landlord is responsible for shovelling snow in multi-unit residential complexes. There

were three living units on this property so the landlord is responsible for snow removal, to the standard set out in section 32(1). That standard is not perfection and it takes into account the location of the rental unit, which in this case is a rural setting.

For the first forty years of my life I lived in northern Saskatchewan and for the next ten I lived in Regina. As a result, I am very familiar with winter driving conditions – in rural and urban settings. The conditions shown in the tenant's photographs are typical winter driving conditions. I find that the landlord met the standard of maintenance set out in section 32(1). Further, I am not satisfied that the conditions in the yard, which are quite ordinary, are the only reason why the tenant needs to replace two tires and have the wheels aligned. The claims for a rent reduction and for tire replacement are dismissed.

Filing Fees

As the landlords were substantially successful on their application I find that they are entitled to reimbursement from the tenant of the $100.00 fee they paid to file it. Conversely, as the tenant was substantially unsuccessful on both her applications no order for reimbursement from the landlords will be made.

Conclusion

For the reasons set out above the following orders have been made:

a. An order of possession effective **1:00 pm, April 30, 2016**, has been granted to the landlords. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.
b. A monetary order in favour of the landlords in the amount of **$850.00** has been granted to the landlords. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court.
c. The tenant's claims are dismissed in full.

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 12, 2016

Residential Tenancy Branch