Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

LRE, 0, OLC, PSF, RP, FF

Introduction

The tenants applied requesting orders the landlord comply with the Act, provide services or facilities required by law, that the landlord make repairs to the rental unit, that conditions be placed on the landlords' right to enter the residential property and to recover the filing fee cost from the landlord.

The tenants provided affirmed testimony that on August 9, 2016 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the landlord via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service, including 43 coloured photographs. That mail was returned marked by Canada Post as unclaimed.

The tenant then served the balance of the evidence, via registered mail, to the landlord, in a single package. A receipt's and tracking number was supplied. That mail was sent more than five days prior to September 14, 2016.

A party may not avoid service by failing to claim registered mail. I note that the tenants used the service address provided by the landlord on a one month Notice to end tenancy for cause that was issued on August 8, 2016.

Therefore, these documents are deemed to have been served in accordance with section 89 and 90 of the Act*;* however the landlord did not appear at the hearing.

Preliminary Matters

The application included a notation that the tenants were disputing a written letter giving 30 days' Notice to end the tenancy. As a result I find that the landlord was served with sufficient Notice that the tenants have disputed the one month Notice to end tenancy for cause issued on August 8, 2016.

On September 14, 2016 the tenants submitted an amendment to the application adding a monetary claim. That amendment did not include a sum claimed. On September 20,

2016 the tenants corrected the amendment by supplying a sum claimed. The correction was not given to the landlord. Therefore, as the landlord was not served with an amendment that set out the sum claimed I determined that the amendment requesting compensation was dismissed with leave to reapply.

I pointed out that the tenants were required to serve that correct amendment not less than 14 days prior to the hearing and that amendments must not be included with evidence, but filed separately.

Issue(s) to be Decided

Should the one month Notice ending tenancy for cause issued on August 8, 2016 be cancelled or must the landlord be issued an Order of possession?

Must orders be issued directing the landlord to comply with the Act?

Must the landlord be ordered to make repairs to the rental unit?

Must the landlord be ordered to provide services and facilities required by law?

Background and Evidence

The tenants signed a tenancy agreement on February 16, 2016. The tenancy commenced on March 15, 2016. Rent is $1,800.00 due on the 15th day of each month. The landlord is holding a deposit in the sum of $1,800.00. The tenancy is a fixed term which converts to a month-to-month tenancy effective March 16, 2016. The tenants said they initialed the last page of the agreement where they confirm they read and agreed to an addendum, cleaning instructions a schedule and "other." The tenants said they did not see any other documents but signed this section as they were asked to do so.

The tenants did not receive a copy of the tenancy agreement until June 11, 2016; they have never seen any other documents. When they received the tenancy agreement they noted that additional comments were made on the first page. The tenants supplied a copy of a screen shot of the advertisement they had replied to when seeking the rental. The advertisement indicates the rental is a farm home and property. When the tenants received the tenancy agreement the landlord had added comments under the address section:

> *"House and yard only. Outbuildings and 51/2 acres will be leased out to other tenant."*

The tenants said that they had signed the tenancy agreement that included rental of the whole property. When they received the tenancy agreement they were surprised that the additional term had been added. The tenants had not agreed to relinquish the use of the property around the home and would have at least initialed any change to the

terms that had agreed to when they signed the tenancy agreement. Pictures of the residential property showed a home surrounded by small fields and some outbuildings with an in-ground swimming pool.

The tenants raised a number of issues that have arisen during the tenancy:

- Lack of irrigation;
- Direction they should not use the in-ground pool;
- Parking for their vehicles;
- Repairs to the property; and
- Improper entry to the property.

The tenancy agreement included a term that provided irrigation. The tenants said the landlord is in a dispute with the city and that they have cut off access to the irrigation water. The tenants intended to obtain livestock, but could not as the pasture dried up. The landlord has not issued any notice of removal of the irrigation service.

In April 2016 the landlord prepared the in-ground pool for the tenants and the tenants went on to maintain the pool. The tenants pointed to three written warnings issued by the landlord directing the tenants to cease using the pool, as it was deemed unsafe. The tenants said the pool was ready for use in April, but on August 5, 6 and September 9, 2016 the landlord left written notes telling the tenants to not use the pool. The tenants did use the pool on several occasions but never felt safe doing so. Recently the landlord came to the property, unannounced, and emptied the pool. The pool is not heated so the tenants would not currently use it.

At the time they signed the tenancy agreement the tenants provided the landlord with a single license number, for one of their vehicles. The tenants did not have the license numbers for the balance of their vehicles, but the landlord told them that was fine; they did not need to provide details on the other vehicles. The tenants have two cars, a truck, fishing boat, another boat and RV. Clause 23 of the tenancy agreement required the tenants to list vehicles. The term indicates that any other vehicles, not listed, may not be parked or stored on the property. Parking is provided for operative automobiles, currently licensed and insured.

The tenants provided photographs taken of the basement of the rental unit. There are numerous personal items that belong to the landlord. There is also evidence of some sort of mold growth. There is a dehumidifier in the basement that is not currently turned on. The tenants are afraid that mold spores will be disturbed and then be lifted into the rest of the house by the cold air intake of the furnace. The tenants want the landlords' property removed and the basement cleaned of any mold.

The tenants provided a list of dates on which the landlord has entered the residential property or the house without providing notice as required by the Act. The landlord will

text the tenants the day prior and will then arrive at the property. He will arrive unannounced and comes to the property to operate equipment.

The landlord came to the property without notice on March 29, 30, April 6, 11, 21; May 10 and May 28, 2016. On June 7, 2016 the landlord called the tenants to say his daughter was going to come to the property to sleep in the landlords' truck for the night. The landlord was told the tenants were not comfortable with this. The landlords' daughter arrived at 10:00 p.m., parked in the drive and woke up the tenants' family. The daughter was told she should not be there but did not leave. The landlord then called the tenants, angry as he had told them his daughter would arrive.

On June 11, 2016 the landlord and his spouse arrived with a copy of the tenancy agreement. On July 15, 2016 the landlord came to the home, after texting the day prior. The landlord arrived, knocked on the door and walked into the house. He walked around both floors and left. The landlord had not given notice he would enter the home.

On July 16, 2016 the landlord came to property to cut part of the yard; no notice was given. On July 19, 2016 the tenants went to the store and when they returned home the landlords' spouse and daughter were on the property. They were told they must give 24 hours' notice and asked to leave. They remained for 40 minutes.

On July 22, 2016 the landlords' spouse text saying she was coming to pick fruit and the tenant declined as they had guests. The tenants requested 24 hours' notice.

On July 25, 2016 the tenants picked 68 pounds of fruit for the landlord; they delivered it to the landlord. They were attempting to accommodate the landlord.

On July 29, 2016 the landlord text the tenants to say he would arrive the next morning; he was told he required a valid reason for entry. The landlord said he was coming to show the tenants the original tenancy agreement. On July 29, 2016 the tenants woke to machinery working on the property.

On August 6, 2016 the tenants received a written notice directing the tenants to vacate the property. A friend of the landlords' then arrived to remove a trailer from the property. No notice of entry was issued to the tenants.

On August 12, 2016 the landlord entered the home with his daughter to turn on the fan and dehumidifier. The tenants were told to remove their boat and unused hot tub from the property.

On August 21, 2016 the landlord came onto the property and around the tenants' vehicles. The landlord left the property and then returned later. The tenant called the police as she was becomi afraid of the landlord. No notice had been given.

The tenants want the landlords' right to enter the property to be restricted to emergency repairs only and for a once monthly inspection of the property.

Analysis

I have considered the copy of the tenancy agreement supplied as evidence and find on the balance of probabilities that the tenants rented the property; including the fields and out buildings. This is supported by the copy of the advertisement supplied as evidence. I also find that irrigation would be supplied for use in the fields of this rural property; which is consistent with the tenants' submission they expected use of the property.

In the absence of the landlord, who did not claim the notice of hearing, I find that the tenancy agreement was altered to add a term removing use of the property. This finding is also supported by the fact that the tenants were not supplied with a copy of the tenancy agreement until three months after the tenancy commenced. Section 13(3) of the Act requires a landlord to provide a copy of the agreement within 21 days of entering into the agreement. Therefore, a copy should have been supplied within 21 days of February 16, 2016, prior to issues emerging with the tenancy.

Section 14(2) of the Act permits a change to the tenancy agreement only if both parties agree. Therefore, as the terms of the tenancy agreement were changed without the consent of the tenants I find that the tenants rented the residential property, which includes the 5.5 acres. As a result I find effective immediately the tenants are free to use all of the property and out buildings.

Section 34 of the Act allows a landlord to terminate a non-essential service or facility, with notice in the approved form. The rent must be reduced by an amount equivalent to the value of the service. Essential services may not be terminated.

The tenancy agreement requires the landlord to provide the tenants with the ability to irrigate the property. I find that this notation also provides further evidence that use of the fields was to be included as a term of the tenancy. As proper notice removing irrigation as a service, with an appropriate rent decrease, has not been issued in accordance with section 27 of the Act, I find that the landlord must immediately ensure that irrigation services are supplied.

The notes issued by the landlord declaring the pool unsafe are inexplicable and are not based on any evidence. The landlord is warned that the pool is for the use of the tenants and their right to use the pool cannot be terminated unless notice in the appropriate form is issued, with a corresponding decrease in rent payable. Therefore, I find that once the weather permits the tenants may again commence use of the pool and continue to do so unless proof of safety issues are provided, in which case notice in the approved form must be provided, with an appropriate rent decrease.

I find on the balance of probabilities that when the tenants signed the tenancy agreement they did not have all of the information available for their multiple vehicles. I found the tenants' testimony, which was unopposed by the landlord, reliable and believable; that the landlord did not insist on a list of all vehicles. Therefore, I find and order that the tenants may park any vehicles on the property that meet the balance of the terms

contained in clause 23 of the tenancy agreement. The tenants are allowed to have guests' park vehicles on the property. Further, the tenants are not required to remove their hot tub from the property. There was no basis for that direction issued by the landlord.

In relation to the concerns regarding mold and the presence of the landlords' personal property in the basement, I find that no later than October 15, 2016 the landlord must:

- remove every piece of personal property from the basement;
- fully and completely clean the basement and ensure that any signs of mold are removed; and
- once the personal property is removed and the basement is fully cleaned ensure the humidifier is fully operational.

The landlord must complete the work in the basement in a timely fashion, with proper notice of entry. This work must be completed over no more than two days; thus eliminating the need for multiple entries to the property.

Section 29 of the Act provides:

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).

From the evidence before me I find that the landlord is ignoring the obligation to provide proper notice of entry and as a result the landlord is affecting the tenants' right to quiet enjoyment of the property. Section 28 of the Act provides:

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.

Despite being asked by the tenants to comply with the Act, the landlord has chosen to ignore his obligations and continued to enter the property and to allow his spouse and daughter to enter the property without the right to do so. This disturbs the tenants and affects their right to privacy.

Therefore, pursuant to section 62(3) of the Act I have made the following order:

- The landlord may enter the residential property, which includes all of the land and out buildings, only in the case of an emergency repair as set out in section 33 of the Act; and
- For the purpose of a once monthly inspection of the residential property.

No other entry is allowed by the landlord or any other family member or friend of the landlord; with the exception of the order issued regarding repair of the basement. Proper notice of entry must be given for monthly inspections.

Any other personal property owned by the landlord may be removed on one of the two days allotted for the basement cleaning.

The tenants are at liberty to submit an application requesting compensation should the landlord fail to comply with any of these orders in full.

As the landlord has the burden of proving the reasons on the one month Notice to end tenancy issued on August 8, 2016 I find that the Notice is cancelled. The landlord did not attend the hearing in support of the Notice. The tenancy will continue until it is ended in accordance with the Act.

Conclusion

The tenants have full use of the property, outbuildings and pool.

The tenants may park vehicles on the residential property that comply with clause 23 of the tenancy agreement. Guests may park their vehicles on the property.

The landlord is ordered to remove all personal property from the basement, to clean the basement of any mold and to ensure the dehumidifier is operational no later than October 15, 2016.

The landlords' right to enter the residential property, including the 5.5 acres is now restricted.

The landlord must issue a proper notice of entry, as set out in section 29 of the Act, for those restricted types of access that have been set out in this decision.

The one month Notice to end tenancy for cause issued on August 8, 2016 is cancelled.

This decision is final and binding and 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: September 29, 2016

Residential Tenancy Branch