



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, PSF, RP, RR, ERP, MNDC

Introduction

The tenants apply to restrict the landlord's right of entry on the property, for an order restoring a service or facility in the nature of a portion of the yard and a working lawnmower, a repair order regarding a deck, oven, faucet and electrical meter and for a rent reduction the landlord's alleged failure to rectify these issues.

Issue(s) to be Decided

Does the evidence show that the landlord has reduced the outdoor area associated with the tenants' rental unit? Has the landlord failed to conduct repairs or reduced a service or facility? Have the tenants been overpaying for electricity? Has the landlord or his workmen been wrongfully coming on to the property?

Background and Evidence

The rental unit is a large house located on an active fruit farm. The landlord bought the farm in early 2018 and rented the house to these tenants starting March 15, 2018. There is a written tenancy agreement. It is a three bedroom house. The monthly rent is \$1500.00, due on the 15th of each month. The landlord holds a \$750.00 security deposit.

The tenant Mr. R.J. testifies that he responded to an ad in the local paper regarding a rental unit, however it was not clean and well kept. The landlord had another one, this home, and that is the one that he rented. He says that he had "concerns" at the start of the tenancy but the landlord said he "would do." What the concerns were about and what the landlord said he would do were not particularized.

Mr. R. J. states it was the tenants' job to take care of the grounds but the landlord's lawnmower had a dead battery. He'd have to jump start it every time he wanted to use it.

He says that in March of this year the landlord came onto the property, cut down two trees approximately 20 feet from the rental unit, burnt the stumps with gasoline and proceeded to till about a half acre of the tenants' lawn and plant fruit trees there. The landlord's trucks and tractors are coming and going to and from the new field and are using his water too.

The electrical meter is in the tenants' name but it is metering not only the electricity consumed by this rental unit but also a second rental unit located above a garage situated elsewhere on the property. The tenants have been paying the entire bill and want the other tenant's portion paid back to them.

Mr. R. J. testifies that in February of this year the septic tank backed up preventing any water from draining from the sinks and bathrooms in the home. The landlord arranged for a backhoe operator to come out and, after two days, the septic tank was located and the lid removed. Mr. R. J. indicates that at some point during this operation the pipe running from his rental unit to the tank broke. He says it proceeded to freeze solid at the tank and so he could not flush toilets or drain water from the rental unit.

Mr. R.J. says that the tenants had to move to East Vancouver for three and a half weeks while this problem persisted, and at a cost of \$2100.00. He wants the landlord to pay him back.

He thinks the landlord has told him he cannot have a dog because one day, when his son was visiting with his dog, the landlord walked by and said "no dogs."

The landlord Mr. J. G. testifies that he thinks it was the tenant's son J. who just gave evidence, impersonating his father Mr. R. J.

He says he only met Mrs. J. at the first meeting of the parties and that he told her and showed her then the area he would be planting in fruit trees. He told her not to plant a garden there because of his plans.

Regarding the septic, he says he was out of town when informed of the problem and that he authorized the tenant to arrange for the excavator "L." Mr. L. attended at the property and could not locate the septic tank. The landlord arrived the second day and the tank was found. A three inch pipe broke and, Mr. J.G. says, the tenant said he'd fix it "no problem." He thinks he fixed it the same day and Mr. L. filled the hole. Mr. L's bill went to the landlord and he paid it. He thinks the rental unit above the garage is on the same septic line. He notes there were no messages from the tenants about the septic not being fixed.

He says there are two electrical meters on the property. One monitors the garage and house. The other monitors other buildings on the farm as well as the water pump. He says the other tenant has been paying these tenants 35 or 40% of the electrical bill.

He says the tenant has been describing himself as a handyman. He wanted to redo the deck for the landlord but the landlord has told him "no."

The landlord is concerned about dogs at the farm because his fruit farm is a "foodsafe" farm and having dogs about automatically revokes that certification. He has seen dog droppings around the farm and he presented photos of them. He also has a complaint about the tenants' failure to maintain the yard, as they are supposed to do.

The landlord's other tenant, Mr. M. F. testified. He confirms that he's been paying the applications 35% of the power bill, in cash, pursuant to an agreement they reached. He says that after the septic tank lid was removed the backhoe and the excavated dirt remained by the tank for a couple of weeks. He had no draining problems with his plumbing during that time, though he may be on a separated tank or field.

Analysis

Not all matters raised in the application were testified to at the hearing and not all matters testified to at the hearing were raised in the application. I will attempt to address those issues actually raised during this hearing or clearly referred to in the documentary evidence adduced during the hearing.

Dogs

This is not an issue that can be dealt with at this hearing. It was not raised directly by the application. The landlord has not officially directed that the tenants not keep dogs. If and when he does the tenants may reapply to have the matter determined.

Boundary of the Rental Unit

The tenancy agreement does not define the boundary of any yard that accompanied the rental unit. There is no fencing to distinguish the residential area around the house from the active farm area, but for grassy areas that might normally be considered as appurtenant to a residence. Contrary to Mr. R. J.'s testimony, I consider that the photos filed by both sides show that there is no fence behind the rear of the house and the field that was expanded by the landlord.

Nevertheless, for the first year of this tenancy the tenants had about 100 feet of grass between their rental unit and the field of fruit trees, as well as two trees growing in that area.

I find that a reasonable observer would have determined that the 100 feet of grassed area between the house and the orchard at the start of the tenancy was the yard accompanying possession of the home. The onus of proving any change to that allotment falls the one who alleges the change. That is the landlord in this case and on all the evidence I find that he has not proved on a balance of probabilities that there was any agreement to reduce the yard size at any time during this tenancy.

As a result, the tenants have suffered the loss of useable yard area as well as a closer encroachment of workmen and vehicles working on the farm.

In all the circumstances, I consider a rent reduction of \$150.00 per month to be reasonable compensation for the reduction in the area of the yard and the closer farm operations. I award the tenants \$900.00 for their loss March to August 2019 inclusive and I direct that their rent be reduced to \$1350.00 per month effective September 15, 2019.

Patio/Deck

The tenants' photos show that the wooden decking is nearing or has passed its useable life. The 2X6 boards are rotting away. The bolt-like nails are protruding in places.

However, the condition of the deck would have been clearly observable at first viewing. I consider it very likely that the tenants saw the deck as it is and rented it as it is. For that reason I decline to make any order for repair or for compensation. It should be noted that it has not been suggested that the deck's condition imposes a particular danger. Had the tenants submitted a report such as a local building inspector's report showing the deck to be a hazard, then this determination may well have been different.

Oven

It appears undisputed that only two of the four elements of the stove are working. **I direct that the landlord attend to having the stove top repaired or replaced by a qualified workman within 30 days of this decision, at his own cost.**

The tenants' texts about the stove appear to have only arisen this spring and there is no evidence upon which to conclude that the lack of two elements caused them any particular loss or inconvenience. I therefore decline to make any monetary award for this item.

Cracked Faucet Leaking

This item was mentioned in the application materials but no evidence was presented to indicate what it was. This item of the tenants' claim is therefore dismissed.

Electrical Meter

Residential Tenancy Policy Guideline 1, "Landlord & Tenant – Responsibility for Residential Premises" provides:

SHARED UTILITY SERVICE

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable⁵ as defined in the Regulations.
2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

The undisputed evidence of Mr. F. satisfies me that the tenants have been recovering what they have agreed to be his rough share of the power bills and so I make no award against the landlord for that money.

At the same time, the arrangement imposed on the tenants requiring them to put the power in their names and collect from another tenant is unconscionable. **I therefor order that within 90 days of this decision the landlord put the electricity bill in someone other than these tenants' names and that he have installed by a qualified person, a meter to measure the electricity consumed at this rental unit. The landlord may, from time to time charge the tenants for that electrical consumption by presenting readings from the meter and charging the current rate for that electricity imposed by his electricity provider for that amount of usage**

Septic

The evidence suggests that the excavator Mr. L. may have been hired by and was working for the tenants when he broke the pipe at the septic tank. In such a case it would be for the tenants to seek compensation from Mr. L. and not the landlord.

However, even if Mr. L. could be said to have been the landlord's employee when the pipe was broken, the evidence does not show that it was the landlord's job to fix it. The landlord knew of the breakage but appears to have simply left town and gone home. Such action is consonant with his testimony that the tenant Mr. R. J. said he'd fix the break.

The tenant Mr. R. J. says the pipe was frozen and so could not be repaired. He did not explain why not. There are various methods commonly known to the average person to thaw out a three inch pipe, whether it be plastic or metal.

It was unexplained about who ultimately did fix the pipe. I consider it unlikely that it was the landlord because he lived a considerable distance away. I think it most likely that it was the tenant Mr. R.J. who fixed it. That adds credence to the landlord's claim that Mr. R. J. said he'd fix it. If Mr. R. J. took it upon himself to conduct or to arrange for repairs he would bear some responsibility for the timeliness of those repairs.

All in all the evidence does not prove on a balance of probabilities that the landlord failed to conduct repairs to the septic system in a timely manner. I dismiss this item of the claim.

Hot Water Heater

The tenants' materials include an invoice. in the amount of \$350.00 for four hours of repair work on a hot water heater. The tenants did not give evidence about this item. I dismiss it.

Lawnmower

I direct that the landlord replace or have replaced the battery in the lawnmower he has provided on the property within 30 days after this decision.

Worker Encroachment

The tenants' complain that farm workers are coming across the property without notice or permission. I consider this complaint to be without merit in the circumstances of this case. The property is a working fruit farm with various paths and outbuildings surrounding the rental unit. The occasional crossing of workers and vehicles as reported by the tenants is consonant with ordinary working of farm and must be tolerated by the tenants.

Conclusion

The tenants are entitled to the orders in bold type above.

The tenants are entitled to a monetary award of \$900.00 against the landlord. I authorize them to reduce their next rent due by \$900.00 in full satisfaction of the award.

The tenants are entitled to reduce their rent by \$150.00 commencing September 15, 2019.

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: August 11, 2019

Residential Tenancy Branch