



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, DRI, MNDC, FF

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for Unpaid Rent and Utilities, to dispute a rent increase and for a monetary order for compensation for damage or loss under the Act or tenancy agreement. At the beginning of the hearing the Parties confirmed that the tenancy has ended and as a result, the Tenants' application to cancel a Notice to End Tenancy is abandoned.

Issues(s) to be Decided

1. Are the Tenants entitled to compensation and if so, how much?

Background and Evidence

This month to month tenancy started on March 1, 2008 and ended on April 1, 2009. Rent was \$2,000.00 per month. The Tenants paid a security deposit of \$1,000.00 at the beginning of the tenancy. The Tenants and Landlord lived in separate houses on the rental property which is a farm. The Parties entered into a written tenancy agreement in January or February of 2009 however, a copy of that agreement was not provided as evidence at the hearing.

The Tenants said that in May, 2008, they sublet a basement suite in the rental unit and at the request of those sub-tenants built an area off of the living room for their new born baby. The Tenants said they gave the Landlord an invoice for \$1,000.00 for labour and materials once the work was done. The Tenants admitted that they never discussed being compensated for the work with the Landlord but assumed that due to the scope of the work it would be taken off of their rent. The Landlord denied being given an invoice for the work. The Landlord claimed that she never had a conversation with the Tenants about building in the basement suite. The Landlord said she was only approached by the Tenants' subtenant who asked for permission to build 2 walls. The Landlord said the construction consisted of 2 unfinished gyprock walls that were removed at the end of the tenancy.

The Tenants also said that in the summer of 2008 the Landlord asked them if they would build her a chicken coop. The Tenants said they had a verbal agreement with the Landlord that in exchange, they would receive one month's free rent. The Tenants said they gave the Landlord an invoice for \$2,500.00 shortly after the work was done but never got a rent reduction. The Tenants claim that when they brought it up with the

Landlord in December, 2008, she told them she couldn't afford to give them a rent reduction.

Shortly thereafter, the Tenants said the Landlord called them and asked them to start paying board for their horses. The Tenants said they asked the Landlord when they got the horses (in April of 2008) if she expected them to pay for boarding and she said, "no" but they would be responsible for looking after them and paying the cost of feed. The Tenants said the horses (and later a pony) did not use the Landlord's barn and were outside in a paddock. The Tenants claim they told the Landlord they couldn't afford to pay more to board the horses but agreed to pay her \$50.00 per month for utilities (ie. water and hydro) and paid \$100.00 in February, 2009. The Tenants said the Landlord initially agreed to this.

The Landlord claimed that she had a verbal agreement with the Tenants to build a chicken coop in exchange for horse boarding. The Landlord admitted that nothing was said at the time about the actual cost of boarding as she assumed the Tenants understood that the customary practice was that they would exchange their labour on the farm for boarding. The Landlord said she was not satisfied with the construction of the chicken coop and both parties agreed that it was not finished. Consequently, the Landlord claimed she advised the Tenants she didn't want to exchange work for boarding any longer. The Landlord admitted to speaking to the Tenants about just paying utilities "and carrying on with free board" which she later said she meant as the exchange of service. The Landlord said that the \$100.00 paid by the Tenants was for one month of utilities.

On February 28, 2009 the Tenants gave the Landlord written notice they were ending the tenancy and advised her they were withholding their rent for the month of March 2009 in compensation for the work done on the chicken coop. The Landlord responded with a statement showing that the estimated cost of boarding the horses since April, 2008 was equivalent to the cost of building the chicken coop and requested payment of March rent. The Tenants admit that March, 2009 rent remains unpaid.

Analysis

I find that there is no evidence of an agreement between the Tenants and the Landlord that the Tenants would be compensated for building 2 partition walls in the basement suite in the rental unit. The Tenants admitted they never discussed this with the Landlord and that it was done solely to accommodate their subtenants. I also find that there is insufficient evidence to support the amount claimed for this work. The Tenants provided only a hand written invoice that said "Room built in suite \$1,000.00 includes, wood, drywall, paint and labour." The Landlord denied ever receiving a copy of this invoice. For all the above reasons, this part of the Tenants' application is dismissed.



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I find that there is insufficient evidence that the Tenants agreed to build a chicken coop in exchange for boarding horses as the Landlord suggested. I accept the evidence of the Tenants that they asked the Landlord at the beginning of the tenancy if she expected to be paid for boarding horses and that she said no. The Landlord admitted that she assumed the Tenants understood the chicken coop would be built in exchange for boarding but that nothing was expressly said to this effect. The Landlord also admitted that she did not know how much horse boarding would be until she priced it out sometime in February, 2009 after the Tenants said they wouldn't pay for rent. I am also persuaded by the Landlord's statement that she knew the Tenants could not afford board for the horses so agreed to "carry on with free board." I do not find the Landlord's explanation of this statement persuasive (ie. that they would go back to an exchange system) as her evidence was that she was unhappy with the quality of the Tenants' work and they failed or refused to do any further work for her.

As a result of the foregoing, I find it more likely that there was an agreement between the Landlord and the Tenants that in exchange for building the chicken coop they would receive one month's free rent. However, both parties agree that the siding of the chicken coop and some interior touches were not finished. The Tenants' invoice simply states "chicken coop \$2,500.00 includes wood for framing, roofing materials, windows, metal for door, labour." There was no explanation why the invoice was for the amount of \$2,500.00 when the agreement was that the work would be in exchange for one month's rent or \$2,000.00. Having regard to the oral evidence of the Parties and the Landlord's photographs, I find that that the chicken coop was almost (or substantially) completed and on that basis, the Tenants are entitled to compensation of \$2,000.00 pursuant to their agreement.

I make no award in reimbursement of the filing fee. As the Tenants agreed to set off the amount of unpaid rent for March, 2009 with any damage award to which they might be entitled, I order pursuant to s. 62(3) and 72 of the Act that the Tenants' damage award of \$2,000.00 be applied in payment of March 2009 rent arrears.

Conclusion

The Tenants' application is granted in part. 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 27, 2009.

Dispute Resolution Officer