

DECISION

Dispute Codes CNL, MNDC, OLC, FF

Introduction

This hearing was convened by way of conference call this date to deal with the tenants' application for an order cancelling a 2 Month Notice to End Tenancy for Landlord's Use of Property, for an order that the landlord comply with the *Act*, regulation or tenancy agreement, for a monetary order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement, and to recover the filing fee from the landlord for the cost of this application.

All parties gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

- Are the tenants entitled to an order cancelling a notice to end tenancy for landlord's use of the property?
- Are the tenants entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?
- Are the tenants entitled to a monetary order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement?

Background and Evidence

This tenancy began on August 1, 2008 as a fixed term tenancy which expired on July 31, 2009 and then reverted to a month-to-month tenancy. Rent in the amount of \$1,500.00 is payable in advance on the 1st day of each month, as well as horse boarding in the amount of \$100.00 per month per horse, and the tenants have 2 horses. There are no rental arrears.

The landlord purchased the property on February 8, 2010, and the parties are still subject to the tenancy agreement that was in place prior to the purchase. The tenants paid the previous owner a security deposit in the amount of \$500.00 and a pet damage deposit in the amount of \$250.00 on June 14, 2008.

The landlord testified that he bought the property with the intention of making a workshop in to a suite that he could live in. There are 2 other non-conforming rentals on the property, meaning that permits to rebuild will not be granted if and when those rentals cease to exist. One of those is a suite over a shop which has a long term tenant, who has resided there for over 10 years. The other is a mobile home which is also currently rented. Another portion of the property is rented to the previous owner.

The landlord further testified that he spoke with staff of the District who advised him verbally that he would not be able to convert the workshop into a suite, and once he discovered this, he issued the notice to end tenancy. He stated that gave 90 days notice to the tenants instead of the required 60 days to be fair, and that he chose these tenants to deliver the notice to because the other tenants have been there longer.

The tenants testified that the landlord had issued a notice to end tenancy for cause, which was heard at dispute resolution in April, 2010. At that hearing the landlord did not mention anything about wanting to move onto the property and nothing to support that claim is included in any of the evidence the landlord provided for this hearing. The landlord testified that he issued the first notice to end tenancy stating that it was issued for cause, and that the cause was his intention to move in. When questioned about the date that he received the Decision of the Dispute Resolution Officer, the landlord testified that he received it on or about April 24, 2010 and issued the second notice to end tenancy within days of that.

The tenants further testified that the tenancy agreement states that water is included in the rent, however they have been paying the hydro and discovered that the landlord had allowed another trailer to move onto the property, which encroaches on their rental property, without their consent, and that the tenants pay for the hydro to pump water to that newly rented trailer. The tenants are asking for a monetary amount for breaching

sections 27, 28 and 29 of the *Residential Tenancy Act*, in the amount of \$10,000.00. The tenants further stated that the previous dispute resolution hearing resulted in an order that the landlord make repairs to the fence, and the fence has not been repaired as ordered. He further testified that the landlord's mother called the tenant and using foul language told him that the repairs will not happen. The fence posts were put back where they used to be, and chicken wire is between those posts instead of proper fencing, which does not keep the horses in.

The tenants also testified that the landlord has added cows to their rented property, and since they pay \$200.00 per month for their horses, the landlord should provide them with that property exclusively or pay the tenants for the same kind of usage. The landlord has left the gate open as well, which provided an opening for their horses to escape. Further, the Decision of the Dispute Resolution Officer who heard the first dispute stated that the tenants had access to all common areas on 10 acres of the property. The tenants claim they have now lost access to a portion of the common area and feel they have been bullied and constantly harassed by the landlord.

The previous owner had told the tenants that their tenancy would not change as a result of the property being sold.

Analysis

Firstly, dealing with the tenants' application to cancel the notice to end tenancy, I find that the landlord has not demonstrated his good faith intentions as stated in the 2 Month Notice to End Tenancy for Landlord's Use of Property. He stated that he intends to move into the unit occupied by these tenants, yet there was no indication of that when he attended the previous dispute resolution hearing. Further, he issued the notice to end tenancy within days of receiving the Decision of the Dispute Resolution Officer, once he found out that he was not successful with his request for an Order of Possession at that time. I do not accept the evidence of the landlord that he issued the first notice to end tenancy stating that it was issued for cause, and that the cause was his intention to move in. The forms clearly have boxes on them to clearly show what the

intention of the landlord is, merely by checking a box, and the notice for cause is on a different form than the notice for landlord's use. Therefore, the tenants' application for an order cancelling the notice to end tenancy is hereby allowed.

The tenants' application also includes a monetary claim in the amount of \$10,000.00 for breach of Sections 27, 28 and 29 of the *Residential Tenancy Act*, which state as follows:

27 (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

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.

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 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).

I find that the landlord is in breach of all 3 sections. I further find that the landlord is in breach of Section 32 by not maintaining the fencing which was also ordered at a dispute resolution hearing.

I also find that the landlord is in breach of a material term of the tenancy. The tenants rented the property for the use of the pasture and acreage for their horses. Therefore, the tenants are entitled to a refund of $\frac{1}{2}$ of the rent paid to the landlord from March 1, 2010 to date, in the amount of \$3,750.00.

With respect to the breach under Section 27, I find that the landlord restricted a certain portion of the common area without notice to the tenants and without reducing the rent as required under Section 27 (2) (b) and (c). I have carefully examined the evidence before me and I find that the tenants have lost access to about a quarter of the area they had previously had access to, and therefore, the tenants are entitled to receive 25% rent abatement for that loss from May 1, 2010 to July 31, 2010, in the sum of \$1,125.00.

Further, the landlord has not provided the tenants with their right to quiet enjoyment by not providing them with exclusive possession of the rental area that they pay for. The landlord allowed another rental trailer which encroaches on their rental property, and the tenants are entitled to recover another 10%, which I find should cover the period of May 1 to July 31, 2010, in the amount of \$450.00.

The landlord has also failed to provide the tenants with unreasonable disturbance, as they have been disturbed by the actions of the landlord on the property, failing to fix and

maintain the fencing as previously ordered, leaving the gate open so the horses would not be contained, and the constant harassment as described by the tenants which was not disputed by the landlord, which I allow at another 10% or \$450.00.

Use of the common areas free from significant interference has not been provided to the tenants. The landlord has allowed more animals in the pastures, and the tenants pay \$200.00 each month for their animals, and I find that they ought to recover that amount from May 1, 2010 to July 31, 2010, in the sum of \$1,200.00.

Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled.

I also order that the tenants be permitted to fix the fencing previously ordered and be reimbursed by the landlord by way of rent abatement, and that the tenants provide receipts to the landlord to offset future rental payments. I further order that the tenants may choose whatever materials and style of fencing they feel is appropriate for their horses. The landlord has failed to comply with the order, and the tenants are therefore permitted to have a fence that is conducive to their own animals.

As for the monetary order, I find that the tenants have established a claim for \$6,975.00. The tenants are also entitled to recovery of the \$50.00 filing fee. I order that the landlord pay to the tenants the sum of \$7,025.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

I further order that the landlord comply with the *Act*, regulations and Tenancy Agreement, specifically, but not limited to Sections 27, 28, 29 and 32, and that the landlord honour the tenancy agreement by providing the tenants with their right to quiet enjoyment.

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: July 13, 2010.

Dispute Resolution Officer