

DECISION

Dispute Codes MNDC, RP, O, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order, an order compelling the landlord to perform repairs and an order compelling the landlord to provide a copy of the tenancy agreement. The tenants were represented by the male tenant, S.M., and in this decision where the word “tenant” appears in its singular form, it is used to refer to S.M.

The landlord had submitted a written request to adjourn the hearing, but at the hearing she confirmed that she was prepared to proceed on the date scheduled.

Issues to be Decided

Are the tenants entitled to an order compelling the landlord to perform repairs?
Are the tenants entitled to a monetary order as claimed?
Should the landlord be ordered to provide the tenants with a copy of the tenancy agreement?

Background and Evidence

The parties agreed that the tenants originally moved into the rental unit in September 2009. They further agreed that the tenants are residing in one of 2 residences on the residential property. The tenants reside in Unit A and share a common driveway with parties who occupy Unit B. A fence lies between the 2 residences and the tenant testified that his understanding and practice since 2009 was that he had exclusive use of the area up to his side of the fence and the occupants of Unit B had exclusive use of the area on their side of the fence. The landlord testified that her understanding was that the tenants have exclusive use of Unit A and use which is not exclusive of the remainder of the property up to the fenceline.

There also exist 2 structures on the residential property which the parties referred to as barns. The tenants acknowledged that they did not have access to Barn B, but stated that they have always had exclusive use of the land surrounding Barn B.

At the hearing, the parties agreed that the landlord would provide the tenants with a copy of the tenancy agreement and would perform certain repairs. They further agreed that the landlord would compensate the tenants for hydro used by the property

manager, J.K., in the amount of \$220.00. The details of that agreement are outlined in the Analysis section below.

The parties were unable to agree on the larger part of the tenants' claim for compensation. The tenants testified that J.K. moved into Barn B in October 2011 for what was supposed to be 2 months. J.K. did not vacate Barn B until October 2012. The tenants seek \$300.00 per month in compensation for the 10 months in which J.K. occupied Barn B beyond the 2 month period they were expecting.

The tenants gave evidence that while J.K. was living in Barn B, they were unable to permit their dogs to roam freely on the residential property for fear of an altercation arising with J.K.'s dog. They claimed that their privacy was compromised because J.K. was on the property and that his demeanour changed while he was living in Barn B as he acted rudely toward the tenants.

The landlord took the position that because the tenants did not have exclusive use of the area around Barn B, they can have suffered no loss.

Analysis

The parties came to an agreement on the following issues:

- By February 28, 2013, the landlord will arrange for the following repairs to be completed by qualified professionals:
 - Kitchen sink repaired by a plumber;
 - Rotting stairs repaired or replaced by a carpenter; and
 - Broken gutter repaired or replaced by a gutter professional.
- The landlord has already mailed the tenants a copy of the tenancy agreement, but if they have not received the agreement by February 6, they will contact the landlord and she will mail another copy.
- The landlord will compensate the tenants in the amount of \$220.00 for J.K.'s hydro usage over 10 months.

Turning to the remaining issue on which the parties did not agree, the parties have never clearly identified in writing the boundaries of the area over which the tenants have exclusive use. The tenants have believed that they had exclusive use of the property up to the fence line since their tenancy began in 2009 and I find it more likely than not that they came to this understanding because this was the original agreement between the parties.

Because the tenants knew that they were not permitted access to the interior of Barn B, it makes sense that the landlord would maintain the right to reasonable access to Barn

B. However, I find that J.K. having taken up residence in Barn B exceeded the reasonable access that the tenants should have expected and I find that his residence in the barn created an interference with the tenants' right to exclusive use of the property and with their right to quiet enjoyment.

The tenants are seeking an award of \$300.00 per month as they claim that they should be entitled to some sort of occupational rent and the value of what it would have cost J.K. to store his belongings elsewhere as well as an award for loss of quiet enjoyment and exclusive use. I find that while there has been some infringement of the tenants' rights, it has been relatively minimal and more of an annoyance than a serious interference. I find that an award of \$50.00 per month for 10 months will adequately compensate the tenants and I award them \$500.00.

As the tenants have been somewhat successful in their claim and as they were forced to make the claim because of the landlord's reticence in addressing their requests, I find that the tenants are entitled to recover the filing fee paid to bring their application and I award them \$50.00.

Conclusion

The landlord is ordered to give the tenants a copy of the tenancy agreement and to perform the aforementioned repairs by February 28, 2013.

The tenants have been awarded a total of \$820.00 which represents \$220.00 which the landlord agreed to pay for hydro, \$500.00 for loss of quiet enjoyment and \$50.00 for their filing fee. The tenants may deduct \$820.00 from a future rental payment.

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: January 30, 2013

Residential Tenancy Branch