Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, OLC, MND, MNR, FF, O, SS

Introduction

This hearing dealt with two related applications. One was the tenants' application for orders setting aside a rent increase; awarding the tenants monetary compensation; and compelling the landlord to comply with the Act, regulation or tenancy agreement. The other was the landlord's application for a monetary order and an order permitting service of the Application for Dispute Resolution and Notice of Hearing by a means other than one permitted by the *Residential Tenancy Act* (hereinafter referred to as the Act). Both parties appeared and had an opportunity to be heard.

The landlord advised that she had been able to serve the tenants by one of the means permitted by the Act and no further order was required.

Both parties had claimed compensation for their time, mileage, cost of registered mail and other expenses related to their dispute. They were advised at the outset of the hearing that the Act does not give arbitrators the authority to award any costs related to the conduct of a dispute resolution hearing except the filing fee. The hearing proceeded on the remaining issue.

As the parties and circumstances are the same for both applications, one decision will be rendered for both.

Issue(s) to be Decided

- How should the tenancy agreement be interpreted?
- Is the landlord entitled to a monetary order and, if so, in what amount?
- Is the rent increase served by the landlord valid?

Background and Evidence

This tenancy commenced June 1, 2012. The rental unit is one of four houses located on a 120 acre parcel. The houses are in a row. Each house is located on a lot of approximately 1.5 acres. In front of the houses is a parcel of approximately 90 acres

and behind the houses is another 23 acre parcel of undeveloped pasture land. Each house, the 90 acre parcel and the 23 acre parcel have separate titles. The 23 acre parcel is for sale.

The parties signed a detailed tenancy agreement prepared by the landlord. The relevant provisions of the agreement are:

- Rent is $1650.00 and $25.00 for each horse. If the 23 acre pasture sells the rent is $1650.00.
- The tenancy is for a fixed length of time, one year, ending on September 30, 2013. (June 1, 2012 to September 30, 2013 is more than a year but this is the wording of the tenancy agreement.) At the end of the fixed length of time the tenancy may continue for another fixed length of time.
- In exchange for repairing/renovating/constructing certain specified elements of the home's exterior the tenants will receive one month of free rent.
- In exchange for ling a detailed list of renovations/repairs to the main and upper level of the house, the tenants would receive two months of free rent. The landlord is to pay for all materials.
- In exchange for renovating "the basement existing bedroom, shop and entrance room , closing in open ceilings and walls to match up to existing walls, taking out bedroom wall with incorporated closets, finish wall and install a new PVC floor" the tenants would receive another month of free rent.
- "All plumbing work or electrical work will be arranged by Landlord to be done by a tradesman possible in one visit."
- "The Tenants are allowed 16 Yorkies, chickens and a maximum of two horses, within the perimeter of the acreage. There will be an extra charge to the tenant per animal of $25.00/mo. If more than above animals."
- "The landlord agreed for non permanent fencing, and a lean to or shelter for the horses to be put up in the adjacent pasture land or in yard, or any needed fencing in the yard for the safety of the tenants Yorkie dogs. Chickens must be kept clean and in the yard. Horses will be allowed also to use the adjacent 23 acre parcel for grazing."
- The four months of free rent were to be June, July, August and September, 2012.

There were another two pages of additional terms of the tenancy agreement that are reproduced or referenced in this decision.

It is acknowledged by the parties that a new fixed term tenancy agreement has not been signed and the tenancy is a month-to-month tenancy.

It is acknowledged by both parties that the tenants have completed the work to the exterior, main level and upper level of the house to the landlord's satisfaction. It is also acknowledged that the tenants did receive the four month of free rent as set out in the tenancy agreement.

It is acknowledged by the parties that the work in the basement has not been completed. The landlord says nothing has been done; the remaining work will cost about $1650.00; and she want payment of the $1650.00 rent that the tenants received for work not done.

The tenant says they did some work but cannot proceed until the electrician does some work. The tenant says that the wires in the ceiling were cut and they should be repaired before the basement is closed in. The landlord says there is work that can be done without an electrician. Neither side filed any photographs or provided any evidence other than their oral testimony.

The tenants build a horse shelter on the 1.5 acre lot which they occupy. They have used electric fence to set off a portion of the 23 acre parcel for their horses. The fence consists of a series of poles, two to three feet high and about an inch in diameter, with two wires strung between them. The tenant referred to the posts as step-in posts.

The parties disagree on the number of acres enclosed by the electric fence. The tenant argues that the fence is necessary because the fence and gate surrounding the 23 acre parcel is in poor condition; the landlord says the existing fencing is quite adequate.

The landlord argues that they had an oral agreement that the tenants would only fence a small portion of the 23 acre parcel and that the references in the tenancy agreement to the 23 acre parcel was merely for identification. The landlord wants the electric fencing removed. The tenant says that is only using a small portion of the 23 acre parcel had been important to the landlord when the tenancy agreement was signed it would have been specified in the agreement.

The landlord says the tenants have created a problem for her because the electric fencing has been arranged so the horses grazing area runs along the back of all four houses instead of straight back from the boundaries of the tenants' yard.

The landlord says that four months ago she rented one of the houses on a one year fixed term tenancy to a family that included a little boy. At mid-month of the first month those tenants told her they would be moving out at the end of the month because their son was allergic to horses and the horses were leaning over the fence into the yard,

close to the house. Those tenants did move out and the landlord says she lost a month's rent as a result. She did not take any action against those tenants and could not remember their name.

The tenant says she spoke to her neighbour after she received a letter from the landlord about the situation and offered to move the electric fence. The neighbour told her not to bother; "they had had enough"; and went on to describe a litany of deficiencies in his rental unit.

The landlord claims $80.00 for fees charged to her by her bank when two of the tenants' rent cheques were returned NSF. The tenant says the landlord has never provided any proof that her bank charged her for the returned cheques.

When the tenants moved onto this property they had two horses. In March of 2014 one of the horses died. The tenants got a second horse right away. At the end of July they brought a third horse home to try out. After a couple of weeks they decided they wanted to keep it. On August 29 the landlord notified the tenants that they were only permitted to have two horses and to please remove the third horse. The tenants responded that the tenancy agreement allowed them to have additional animals. Since August they have paid the landlord and additional $75.00 per month for the three horses. The landlord has cashed the cheques.

The landlord suspects the third horse actually arrived in May and wants compensation for that horse for May, June and July.

In September the landlord served the tenants with a Notice of Rent Increase effective January 1, 2015. The increase is for 2.2% calculated on rent of $1700.00. The tenant says the increase should be calculated on $1650.00.

In her written submission the landlord raised the issue of the tenant conducting a massage therapy practise at the rental unit. She says this is not permitted because this is a residential unit only.

In her written submission the landlord also suggested that the tenants have more than sixteen dogs. The tenant testified in the hearing that they have sixteen dogs.

Analysis

How should the tenancy agreement be interpreted?

There are legal principles which govern the interpretation of express contractual terms. They are:

a. Where there is no ambiguity in a written contract it must be given its literal meaning.
b. Words must be given their plain, ordinary meaning, unless to do so would result in a absurdity.

c. If there are two possible interpretations, one which is absurd or unjust, the other of which is rational, the one which is rational shall prevail.
d. In cases of doubt, the language should be construed against the drafter of the contract.

Applying these principles to this agreement I find as follows:

- The rent is $1650.00 per month. The rental unit is the house and 1.5 acre parcel on which it is located.
- In addition, the tenancy agreement grants to the tenants certain privileges on the adjacent 23 acre parcel in return for a separate payment. The tenants may graze their horses and erect a temporary fence (the electric fence that has been installed is a temporary fence) on any portion of the 23 acre parcel. The charge for this licence is $25.00 per horse. There is no limit on the number of horses the tenants may have or on the number of acres that may be fenced.
- The tenancy agreement does not prohibit the tenants from conducting a business from the rental unit.

Is the landlord entitled to a monetary order and, if so, in what amount?

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,

the genuine monetary costs associated with rectifying the damage.

Although the tenancy agreement specifies time limits for many of the undertakings made by the parties there is no time specified for the completion of the renovations/repairs to the basement. As long as the work is done by the time the tenants move out they are in compliance with the tenancy agreement. Accordingly, the claim for payment of one month's rent is dismissed.

The only evidence regarding the neighbour's reason for leaving is the contradictory oral testimony of the parties. There is nothing to tip the balance of probabilities in the landlord's favour. Accordingly, the claim for loss of rental income from this property is dismissed.

The only evidence as to when the third horse was acquired by the tenants is the express sworn testimony of the tenant and the suspicion of the landlord. The claim for additional payment for the third horse is dismissed.

The landlord could have easily proven her claim for NSF fees by filing documents from her bank showing the fees that had been charged to her account. She did not. This claim is dismissed.

Is the rent increase served by the landlord valid?
The regulation provides that a rent increase coming into effect in 2015 may be to a maximum of 2/5%. 2.5% of $1650.00 is $41.25. The rent increase served on the tenants is in the amount of $37.50. As it is less than the amount allowed by the regulation the tenants may not dispute this amount (see sections 43(1) and (2) of the Act). Accordingly the tenants' claim for an order setting aside the rent increase is dismissed.

Conclusion
For the reasons set out above all the claims of the landlord and the tenant are dismissed.

As neither party was particularly successful on their respective applications no order with respect to the filing fees paid by both will be made.

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: December 03, 2014

Residential Tenancy Branch