



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC FF

Introduction:

Both parties attended and gave sworn testimony. The landlord agreed he received the Application for Dispute Resolution by registered mail and the landlord also provided evidence that they served the evidence on the tenant by registered mail (number provided). I find the documents were legally served pursuant to section 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order for \$25,000 pursuant to Sections 7, 65 and 67 for a rent rebate and damages; and
- b) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that the landlord rented to him living accommodation and then refused to install services? If so, to how much compensation has he proved entitlement? Is he entitled to recover filing fees?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. They described the situation. This is a farm property with a main house and a suite over the garage at the side. The tenant rented the suite in Spring 2011, rent was \$750 a month on a month to month basis. No lease was signed. He said his rent was increased to \$850 a month in the fall of 2013. He vacated in November 2014. He was farming some of the land during this time.

The parties differ in their description of the events after that. The tenant said the landlord asked him to move into another part of the property, a cabin which was not yet built. It was to be built by March 2015 but he continued to pay rent of \$850 a month from November 2014 believing that the landlord would construct the cabin and install services. The tenant moved into the cabin in March 2015 as he could not wait any

longer, he said. Only a toilet existed. No plumbing, running water, kitchen or bathroom was installed. There was no electrical wiring except for a single extension cord he used to run a small space heater. He said the landlord kept promising he would work on it from March 2015 to August 2016 but never did. His toilet was broken from June 2016 to September 6, 2016 when the tenancy ended.

The landlord said that they had no leases with tenants. She said the suite in the house occupied by the tenant from 2011 to November 2014 was in deplorable condition due to the tenant's behaviour. Some letters are in evidence supporting that it was in rough condition. The tenant went on holiday in November 2014 and she said the landlord never intended to create a residential tenancy with the tenant after that but entered into an agreement with him to use a shed (cabin) and adjoining acreage to grow agricultural produce for \$850 a month. The lease in evidence indicates that only water, parking and internet are included in the rent. She said they did not realize that a Residential Tenancy Agreement was not the correct form of contract for this is a commercial tenancy. The tenant's primary purpose was to farm and the shed was to be storage for tools with a supply of water and a toilet for him and workers while he was farming. The tenant said his signature was forged for he never signed such a lease. The landlord said that after obtaining permission to use the land and shed, the tenant moved into it and began making illegal modifications. She said he was a squatter. Photographs in evidence show wiring and plumbing pipes going into the shed. She said he paid rent of \$850 and he used more property, for example to build a greenhouse, and he took the landlord's eggs and sold them.

In November 2014, the tenant agrees he saw a fifth wheel with the landlord which was to be an answer to accommodation for him. He said it was in poor condition and too small. He preferred to have the cabin finished with a proper bathroom and kitchen. The landlord said they thought the 5th wheel would be a place for him to live and allow him to farm and live on the property as the shed/cabin was to be used for storage. The landlord said the tenant became aggressive and was demanding things be done to the cabin to accommodate him and he kept changing his mind and asking for things that would not work in the small space. She emphasized the cabin/shed was never intended for living accommodation and was primarily a place for the tenant to store his goods and implements while he farmed. He really wanted to farm. Several photographs illustrate his farming efforts and emails show negotiations for the 5th wheel in November 2014.

The tenant claims \$25,000 for damages he suffered due to lack of services, \$13000 (\$650 x 12 months) as rent rebate for \$200 is the actual cost of renting a storage unit which is all he had in the cabin. He claims \$23,760 for eating out 3 meals a day for 600

days and \$4,050 for the cost of pool entries to shower. He submits these damages were suffered due to the landlord's infringement of his rights.

The legal representative of the landlord submitted that this matter does not fall under the Act according to section 4 (d). It was a commercial contract to farm the land and have a cabin/shed for storage and day use for convenience. The tenant made a choice to move in without agreement for services or authority to do so; he could have chosen to use an RV but again refused to purchase one which he could have parked on the land for living accommodation. The tenant said he was there for two years so how unauthorized? The landlord said he was squatting in the shed.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the tenant as applicant to prove the landlord violated the Act or tenancy agreement causing him to suffer losses. I find insufficient evidence that the landlord violated the Act or any agreement with the tenant. The only written agreement in evidence dated February 2015 (although the tenant said his signature was forged) supports the landlord's contention that the shed/cabin was never intended to be used as living quarters. It clearly states that only water, parking and internet are provided which is consistent with the landlord's contention that the shed was not intended for habitation

but as storage area for part of the tenant's farming operation. I find the tenant's evidence and the photographs prove that he was farming and his purpose for renting the land was for farming.

I find the unsuccessful negotiations for the purchase of a 5th wheel in November 2014 also support the landlord's contention that it was never intended that the tenant live in the shed and he was trying to help the tenant find living accommodation. I find the Act defines a rental unit as "living accommodation rented or intended to be rented to a tenant". I find insufficient evidence that the shed was living accommodation or was intended to be rented as such to the tenant.

In summary, I find the weight of the evidence is that the tenant's use of the shed was primarily for the business of farming and section 4(d) of the Act provides that the Act does not apply to this situation. I find I have no jurisdiction in this matter.

Conclusion:

I dismiss the application of the tenant without leave to reapply. I find the Act does not apply to his situation and I have no jurisdiction in this matter. No filing fee is awarded due to lack of success.

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: October 03, 2017

Residential Tenancy Branch