

DECISION

Dispute Codes: MNDC and FF

Introduction

This application was brought by the tenant seeking monetary compensation for loss of quiet enjoyment of the rental unit as a result of the landlord showing it to prospective tenants without having given written notice.

Issues to be Decided

This matter requires whether and in what amount the tenant is entitled to monetary compensation for loss of quiet enjoyment.

Background and Evidence

This tenancy began on October 1, 2007 and ended on April 30, 2010 under the tenant's notice, although she did give evidence that she moved out early due to apprehension regarding quiet enjoyment. Rent was \$928 per month and the tenant paid a security deposit of \$447.50 at the beginning of the tenancy.

During the hearing, the parties concurred that the tenant had given notice in March 2010 of her wish to end the tenancy on April 30, 2010.

The tenant's claim stands on the fact, agreed to by the landlord, that he had shown the rental unit twice without having given written notice and without having obtained the specific consent of the tenant. There was some disagreement between the parties as to whether there was a general agreement that the landlord could show the unit on telephone notice.

The landlord stated he had attempted telephone notice on both occasions, but getting no answer, left a voice mail message. The tenant stated she could not have received the messages because she had a pre-paid cellular telephone account that did not provide voice mail.

In any event, the landlord attended for the first showing on April 9, 2010. The tenant became aware of that showing as the landlord had left a note advising that the unit had not been in a suitable state for showing.

On April 12, 2010, there was a second showing and the landlord stated he had knocked on the door, then opened it and announced himself in a loud voice. Hearing no reply, he began to show the suite, unaware that the tenant was bathing in the tub while the door to the bathroom was open.

The tenant stated that she was so shocked and upset by the encounter that she reported the matter to police and moved out the following day out of concern for her safety.

The landlord stated that both he and the prospective tenant were extremely embarrassed by the encounter that they apologized and left the rental unit immediately, although tenant stated she heard no apology.

The landlord said that he was aware of the requirement to give 24-hour written notice, but that in ten years of showing units to prospective tenants on telephone notice, he had never before encountered a problem. He stated that if the tenant objected strongly to his entry without written notice, he would have expected her to express her objections after the April 9, 2010 showing, but she did not.

Analysis

By his own accounting of the facts, the landlord concurs that he breached section 29 of the *Act* which requires a landlord to give 24-hours written notice of attending the rental unit unless the tenant agrees at the time of entry .

In so doing, I find that the landlord also breached the tenant's right to quiet enjoyment of the rental unit, a covenant in all rental agreements, expressed at section 28 of the *Act*.

On the question of loss of quiet enjoyment, Residential Policy Guideline 6 advises, in part:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment ...Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

I do not find that the landlord intended to shock the tenant to the degree he did, but I do find that the result of the unscheduled entry was reasonable foreseeable.

Accordingly, I find that the tenant is entitled to compensation for the loss of quiet enjoyment and I set the amount at one-half month's rent. Having found merit in the tenant's application, I further find that she is entitled to recover the filing fee for this proceeding from the landlord.

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for service on the landlord in the amount of \$514.00, made up of \$464.00 for one half month's rent plus the \$50.00 filing fee for this proceeding.

August 12, 2010
