



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, LRE, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to limit the landlord's access to the rental unit and for a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

At the outset of the hearing the tenant confirmed that he was no longer living in the rental unit and there was no longer a need to limit the landlord's access to the rental unit. I therefore amend the tenant's Application to include only the monetary issues.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for damage or loss and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on April 26, 2011 for a 4 month fixed term tenancy that began on May 1, 2011 for a monthly rent of \$1,800.00 due on the 1st of each month with a security deposit of \$900.00 paid on April 26, 2011. The tenancy agreement stipulates that at the end of the fixed term the tenant must vacate the rental unit.

The tenant seeks the amount of \$900.00, the equivalent of ½ month's rent, as compensation for the loss of quiet enjoyment resulting from the landlord's schedule for viewings of the rental unit to potential new tenants.

The parties agree that the landlord began showing the rental unit to prospective tenants on July 1, 2011. The landlord testified that he needed to start showing the rental unit in July because he was going to be away on vacation for part of the month of August 2011.

The tenant submitted several notices from the landlord indicating the times of upcoming viewings including timeframes for potential viewings for specific periods of time. The notices include the following times:

1. July 1, 2011 3:30 p.m. to 6:00 p.m.
2. July 5, 2011 to July 31, 2011 from 11:00 a.m. to 12 a.m. and 3:30 p.m. to 6:30 p.m.
3. July 11, 2011 to July 31, 2011 from 11:00 a.m. to 7:00 p.m.
4. July 23 and 24 2011 from 12:00 to 12:30 and July 25, 26, 27, and 28, 2011 from 5:00 p.m. to 5:30 p.m.
5. July 28, 2011 from 5:30 p.m. to 7:00 p.m.
6. July 30 and 31 2011 from 12:00 p.m. to 12:30 p.m. and August 1, 2, 3, and 4, 2011 from 5:35 p.m. to 6:10 p.m.
7. August 6, 2011 from 11:00 a.m. to 1 p.m. and from 5:30 p.m. to 6:30 p.m. and from August 6 to August 31 2011 from 5:30 to 6:30 p.m.
8. August 16 to August 31 2011 5:00 p.m. to 6:30 p.m. and August 18 to August 31, 2011 from 11:30 a.m. to 12:30 p.m.

In one of the notices submitted the landlord had written "There may be an occasional tenant outside of these hours, usually because they have to work late. Please agree to show the suite to them, if that is not acceptable to you, I will post a notice which is much wider in scope (10 am to 8 pm, for example)."

The tenant testified that they had tried to request, verbally, from the landlord less frequency of visits and specific notifications if he had showings by text message. The tenant confirms the landlord did text message on of the tenants and she informed the other tenants. The landlord testified the tenants did not put any complaints or requests in writing.

The landlord testified that if he did show the rental unit it was done so quickly and that he only inconvenienced the tenants for a short period of time (i.e. approximately 15 minutes) on any of those occasions.

The tenant testified that as their new living accommodation was available by the 15th of August they moved at that time. The landlord testified that he secured new tenants on August 18, 2011.

Analysis

Section 28 of the *Act* stipulates a tenant is entitled to quiet enjoyment including, but not limited to: reasonable privacy; freedom from unreasonable disturbance; and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29.

Residential Tenancy Policy Guideline #6 states that it is necessary to balance the tenant's right to quiet enjoyment with the landlord's rights and responsibilities, including the showing of prospective tenants when a tenancy is nearing an end.

Policy Guideline #7 speaks to the landlord's right to access the rental unit and states that the landlord must provide notice and that the purpose for entry must be reasonable. It goes on to say however, a reasonable purpose may lose its reasonableness if carried out too often. The guideline further suggests that parties should agree beforehand on reasonable times for entry.

While the landlord asserts that the actual showings did not amount to the number of times that were posted, the tenants still needed to be prepared to either leave the rental unit or accommodate viewings for all of the stated times the landlord had suggested he would have viewings.

I find that in essence the tenants were "on-call" for each of the time frames that the landlord identified as a potential showing time. As such, I find the tenants' quiet enjoyment was severely impacted for each of the days the landlord told the tenants there may be a viewing.

I find that because the landlord was going on vacation in the last month of the tenancy is insufficient justification for the landlord to start showings 2 months prior to the end of the tenancy. The landlord knew when the tenancy agreement was signed that the tenancy would end in August 2011 and the tenants' quiet enjoyment should not be compromised for the landlord's lack of planning.

I further find that as the parties did not come to a mutual agreement to viewing times and despite concerns raised verbally by the tenants the landlord failed to consider the impact to the tenants' quiet enjoyment of the rental property.

While I recognize the landlord is in the business to have tenants occupy his rental properties, it is not the tenants' business and the impact on them should be minimal. I not only find the schedule to be excessive but I also find that the landlord implied an increase to those times in his one notice by way of a threat.

Based on the evidence and testimony provided, I find that the tenants suffered a loss of quiet enjoyment; that this loss results in a violation of the *Act* on the part of the landlord by way of an excessive viewing schedule for a prolonged period of time. I also accept the value purposed by the tenant of ½ month's rent, in light of the short fixed term of the tenancy agreement, to be reasonable.

And finally, I am satisfied the tenant attempted to mitigate their losses by communicating their concerns to the landlord. I accept the landlord's statement that the tenants did not submit anything in writing to him regarding their concerns but I also note the landlord not dispute the tenant's claim that they did raise their concerns with him, verbally.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$950.00** comprised of \$900.00 compensation and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: August 31, 2011.

Residential Tenancy Branch