



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC PSF LRE RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to obtain Orders to have the Landlord provide services or facilities required by law, to suspend or set conditions on the Landlord's right to enter the rental unit, and allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Landlords or their Agent breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain monetary compensation and orders as a result of that breach pursuant to sections 62 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant's Witness affirmed she has seen how the Tenant's mail is delivered and that it is slid underneath the Tenant's laundry room door. She stated that the Tenant has told her that she is not receiving the mail regularly.

The parties agreed they entered into a fixed term tenancy agreement that began on February 1, 2011 and is set to switch to a month to month tenancy after January 31, 2012. Rent is payable on the first of each month in the amount of \$900.00 and on January 9, 2011 the Tenant paid \$450.00 as the security deposit.

The Tenant affirmed she is seeking compensation of \$800.00, based on \$200.00 per month for the past four months (September to December 2011), for having to deal with real estate agents who are selling the rental unit, for an unannounced entry by a real estate agent on November 13, 2011, and for the withholding or delay in delivering her mail.

The Tenant advised that at the time she entered into this tenancy agreement she expressed her desire to have consistency and a quiet home to reside in with her son and that the Landlords never informed her of their intention to sell the property at that time. Now she has had to deal with real estate agents attempting to show her unit to prospective buyers. She is of the opinion that she has the right to refuse the real estate agents access to show the unit, even if they provide her with written notice of entry, and argued that she has the right to suggest alternate times for showings. Furthermore she provided testimony and evidence pertaining to an incident which occurred on November 13, 2011 whereby a real estate agent attempted to show her unit without notice and actually unlocked her door and attempted to gain entry when they were surprised to see her son watching television. She was in another room at the time and came out and spoke to the potential buyer and confirmed they unlocked and opened her door.

With respect to withholding of her mail, the Tenant advised that when the upstairs unit was occupied the upstairs tenant would receive all of the mail and would deliver the Tenant's mail by sliding it underneath her door that enters the shared laundry room. The upstairs tenant moved out and the unit has remained vacant. Her mail continues to be delivered through the mail slot in the upstairs unit's main door and the Landlords refuse to give her a key so she can access her mail on a daily basis. She has requested that an exterior mailbox be installed by the Landlords and they have refused which has caused her to suffer additional charges to her credit cards and to have a trial postponed because she did not receive written correspondence pertaining to these matters. She alleged the Landlords are holding her mail because she has not received any mail for this past month, since filing her application for dispute resolution.

In addition to the \$800.00 monetary compensation the Tenant is seeking to have conditions set on real estate showings of her rental unit, order the Landlords to allow her access to her mail on a daily basis, and reduced rent of \$150.00 per month for loss of quiet enjoyment of her rental unit due to accommodating real estate showings. She is also concerned that prospective buyers have been asking her and her son questions about what their intentions are with respect to continuing their tenancy.

The Landlords affirmed that the Tenant had advised them of problems receiving her mail from the upstairs tenant shortly before the upstairs tenant moved out on November

1, 2011. They had discussed mail delivery with the Tenant at that time when she verbally agreed to have the Landlords deliver her mail every Wednesday and Friday by sliding it under her laundry room door. The Landlords deny withholding the Tenants mail and point to her witness's statement which confirms she has seen mail slid under the door for the Tenant. They confirmed the Tenant requested an exterior mailbox be installed so she could access her mail on a daily basis and that they refused to provide this.

The female Landlord confirmed that she was informed by her real estate agent that a different agent attempted to enter the Tenant's rental unit, without proper notice, on November 13, 2011. She argued that this was not the normal practice and their real estate agent has been very responsible in booking showings and providing proper written notice to the Tenant but the Tenant has been very difficult to work with. It is their practice to only show the Tenant's rental unit to serious buyers. They question the contradiction between the Tenant's written submission which states she was watching television with her son at the time of the attempted showing and her testimony today which provides she was in a different room than her son.

A discussion followed pertaining to which keys are provided to real estate agents through the lock box. The Tenant argues keys to both the upper suite and her lower suite are in the lock box as the real estate agent definitely had a key to her suite to be able to unlock it. The Landlords could not confirm if both keys are in the lock box or if they are properly labelled.

The Landlords confirmed that at the present there are on average two or three showings of the Tenant's unit per week. They wish to continue to work within the provisions of the Act and provide written notice of entry as they have been doing.

In closing the Tenant confirmed she had previously agreed to have her mail delivered twice a week, Wednesday and Friday and now wishes to have access to her mail on a daily basis.

During the course of the hearing I issued the following verbal orders:

The Tenant is hereby ordered to allow showings of the rental unit upon receipt of 24 hour written notice of entry which comply with section 29 of the Act. The Notice is effective 24 hours after the notice is received by the Tenant at which time unrestricted access is to be allowed. A Notice is deemed received by the Tenant immediately if served in person (hand to hand) or three days after the Notice is posted to the Tenant's door, pursuant to section 90 of the Act.

The Landlords are hereby ordered to ensure all real estate agents who show the Tenant's rental unit are instructed not to enter the Tenant's unit unless proper notice has been issued and they are not to engage in conversations with the Tenant or her son during the showings.

The Landlords are hereby ordered to install an exterior mailbox to allow the Tenant unobstructed daily access to her mail. The Landlords are further ordered to block off the mail slot that is currently used for mail delivery and provide instructions for mail delivery to ensure mail is directed into the new mailbox accordingly.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove the other party breached the *Residential Tenancy Act*, regulation, or tenancy agreement and to prove their entitlement to the amount of their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

The Tenant seeks \$800.00 as compensation for restricted access to her mail, causing overcharges to her credit card and a rescheduled court date; and for loss of quiet enjoyment of her suite on November 13, 2011 when a real estate agent unlocked and opened her door and attempted to enter her suite without prior notice.

The parties agreed that previous to November 1, 2011, the upstairs tenant would regularly deliver the Tenant's mail under her laundry room door and that since November 1, 2011 the parties had a verbal agreement that the Landlords would deliver the Tenant's mail every Wednesday and Friday. Even though I find one tenant managing another Tenant's mail to be unconscionable, it is not a direct breach of the *Residential Tenancy Act*, regulation or tenancy agreement. Furthermore, the parties had a verbal mutual agreement for the Landlords to deliver mail twice a week.

As per the aforementioned, I find there to be insufficient evidence to support that the Landlord's breached the *Residential Tenancy Act*, regulation or tenancy agreement or unnecessarily withheld the Tenant's mail; therefore I dismiss the Tenants claim for monetary compensation due to alleged restricted access to her mail.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the

rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

On the matter pertaining to compensation for loss of quiet enjoyment for the November 13, 2011, entry by a real estate agent, I find there to be sufficient evidence to prove a breach of section 28 of the *Act*, as listed above. I accept the Landlords' submission that this incident is not their normal practice, that this has not reoccurred, and their real estate agent has been diligent in providing proper notice of entry since this occurrence. Accordingly, I award the Tenant compensation in the amount of **\$75.00**, pursuant to section 67 of the *Act*.

Although the Tenant has applied for a rent reduction based on Section 27 of the *Act* for repairs, services or facilities agreed upon but not provided, I find she has provided no evidence indicating that the Landlords breached this section of the *Act*. Accordingly, I dismiss this portion of her application.

The Tenant explained her request for future compensation in the form of reduced rent as compensation for breach of her quiet enjoyment during each real estate showing, under section 28, of the *Act*.

I accept the Landlords' evidence and testimony that their real estate agent takes all reasonable steps to ensure proper notice of entry is provided in order to minimize the impact to the Tenant. I also acknowledge that the Tenant is now subject to an increase of interruptions to her quiet enjoyment and privacy above the normal monthly inspections provided for under section 29 of the *Act*.

Residential Tenancy Policy Guideline 6 stipulates that when determining the amount by which the value of the tenancy has been reduced, the Dispute Resolution Officer should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed. The Dispute Resolution Officer can award damages for a nuisance that affects the use and enjoyment of the premises.

After careful consideration of the aforementioned, I find the Tenant does suffer a loss of quiet enjoyment while the house is listed for sale and subject to showings to prospective buyers. Accordingly I award the Tenant compensation in the form of reduced rent in the amount of **\$50.00** per month retroactive to November 1, 2011 and continuing until the end of the month when the house is either taken off the market, or it has been sold, that is to say an offer has been accepted and all subjects have been removed.

Conclusion

The parties are HEREBY ORDERED to comply with all Orders that were issued during the December 21, 2011 hearing and listed above, pursuant to section 62 of the Act.

The Tenant may deduct the one time award of **\$75.00** from her next rent payment in addition to the retroactive **\$50.00 per month** rent reduction beginning November 1, 2011.

EXAMPLE: If this decision is received prior to payment of the January 1, 2012 rent then the Tenant would be required to pay **\$675.00**, as full payment of rent, as follows:

January 1, 2012 rent	\$900.00
LESS: award for Nov 12 th incident	- 75.00
LESS: Rent reduction Nov 1 st	- 50.00
LESS: Rent reduction Dec 1 st	- 50.00
LESS: Rent reduction Jan 1 st	<u>- 50.00</u>
TOTAL PAYMENT DUE	<u>\$675.00</u>

Then as of February 1, 2012 the Tenant would pay \$850.00 as rent (\$900.00 - \$50.00) and so on, until the house is sold or delisted.

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 22, 2011.

Residential Tenancy Branch