



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 a tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and an Order to suspend or set conditions upon the landlord's restricted right to enter the rental unit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the tenant established an entitlement to compensation for damage or loss in the amount claimed?
2. Is it necessary or appropriate to suspend or set conditions upon the landlord's restricted right to enter the rental unit?

Background and Evidence

The month-to-month tenancy commenced September 1, 2012 and the monthly rent is \$1,075.00. The rental unit is a basement suite and the landlords live upstairs. The landlords listed the property for sale and held two open houses: September 12, 2012 and September 16, 2012 as well as a showing on September 20, 2012 prior to the filing of this application on September 21, 2012.

The landlords would notify the tenant of upcoming open houses or showings via email. A significant portion of the communication between the parties was via email. Copies of those emails have been provided as evidence.

The tenant is seeking compensation of \$2,500.00 on the basis the landlords violated her right to quiet enjoyment of the property in the following ways:

- The tenant gave permission for the realtor to enter the rental unit but the landlords would also enter.

- The landlords opened cupboards and drawers in the rental unit in an attempt to relocate the tenant's personal property.
- The landlords folded the tenant's towels and rearranged toiletries, pictures, and other possessions.
- The landlords removed several of the tenant's personal items from the rental unit and put it in their garage.
- The landlords told the tenant her unit was too cluttered and that she was a "clutterbug".
- The landlords requested the tenant not be home while showings or open houses took place.
- The landlord repeatedly tried contacting the tenant by phone, email and knocking on the door when the tenant did not want to speak with the landlord.
- The landlord contacted the tenant's mother and appeared to be observing the tenant's movements.
- The tenant felt watched by the landlords and uncomfortable at the rental unit causing her to start studying elsewhere rather than the rental unit.
- The tenant had a friend contact landlord to inform the landlord that their actions were not appropriate and the landlord hung up on that person.
- After serving the landlords with her Application for Dispute Resolution the tenant found evidence that they had been in her unit again on September 25.
- On September 27 the landlord repeatedly knocked on the tenant's bedroom window early in the morning.

The tenant provided photographs of her unit before and after open houses to demonstrate the landlords' actions to relocate and rearrange the tenant's possessions.

The landlords denied entering the rental unit since September 20, 2012 although the landlord's realtor has entered, with advance notice from the landlords. The landlords denied knocking on the tenant's bedroom window. The landlords acknowledged removing and rearranging some of the tenant's possessions prior to the open houses or showing and provided the following justifications:

- After the tenancy formed the landlords determined they had to sell the property in response to a family crisis.
- The landlords had informed the tenant before she moved in that the property was being put up for sale and she chose to move in rather than accept their offer to end the tenancy with compensation.
- The rental unit is furnished and the tenant moved in two other pieces of furniture, making it more difficult to move within the rental unit.

- The landlords had asked the tenant to move furniture to the space under the stairs.
- The tenant gave the landlords permission to remove items from the rental unit and believed that meant they could remove “anything”.
- The landlords attempted to place the tenant’s personal items in her drawers and cupboards but most were very full so they packed and placed the items in the garage.
- The landlords gave the tenant the opportunity to retrieve items from the garage but she appeared to be fine with leaving them in the garage.
- When the landlords realized the tenant was upset by their actions the landlords apologized and asked for her input as to better manage the next open house.
- The tenant allowed the landlords to move items within the rental unit for the second open house.
- After the second open house the tenant seemed fine with the landlords rearranging items so they proceeded to do the same thing for the showing that followed.
- The person that phoned the landlord was abusive and threatening so the landlord ended the call.

The landlords acknowledge trying to contact the tenant on several occasions when it was apparent she was upset with them. Concerned for her well-being the landlord also contacted the tenant’s mother.

The landlords explained that their actions were not intended to upset the tenant. Rather, the landlords were motivated to present the rental unit its “best light” so as to improve its salability.

In response, the tenant submitted that when she gave permission for the landlords’ to remove “something” she was of the understanding it would be the extra furniture pieces, but not the several personal items that the landlords removed. Nor did she expect the landlords to opening her drawers and cupboards.

The tenant acknowledged the male landlord talked to her about leaving the packed items in the garage but the tenant was of the impression the landlords wanted her to leave the items packed and stored as they would do the same thing for the next open house.

The tenant denied giving permission for the landlords to move things within the rental unit for the subsequent open house and showing. The tenant discovered that the

landlords had rearranged things again and was especially dismayed to find the landlords had put wet towels in with dry towels and mixed her clean and dirty clothes together.

The landlords were steadfast in their position that they did nothing untoward or without the tenant's permission and pointed to the email communication in support of their position.

Both parties referred to numerous email exchanges between the parties in support of their respective position and those emails were provided as evidence for me to review and consider.

Analysis

Upon consideration of everything presented to me I provide the following findings and reasons.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment of their rental unit and the residential property. Section 28 states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

[my emphasis added]

I have only considered the activities up to and including September 21, 2012 as this is the date the tenant filed the application and because the subsequent allegations that the

landlords entered the unit and knocked on the window were disputed and unsupported by other evidence.

I have read the email communications between the parties in their totality; however, I have referenced only relevant parts below.

Prior to the first open house on September 12, 2012 the parties had an exchange of emails on September 5, 2012. The tenant advises the landlord she cannot store all of her things under the stairs for the open house but asks that it be sufficient for her clean the apartment and put her valuables away. In response the landlords ask the tenant the following question: "if we want to take something out and then put it back straight after is that okay with you?" The tenant responds "Yes, that is fine".

I was not provided any submissions or evidence there were further emails or conversations about the first open house until September 12, 2012 when the landlord emailed the tenant to remind the tenant to leave the suite clean and tidy and goes on to state "if anything is left out we'll put it away, as agreed." The tenant responds by stating she will be gone by 3:00 p.m. and will move her car. Interestingly, the landlords request to "take something out" morphed into "if anything is left out" in the absence of evidence of such a change to their agreement.

On September 13, 2012 the tenant emailed the landlords to communicate to them how dismayed she was to discover her possessions packed and removed and put in the garage. The tenant clarifies that she understood the landlords may remove a few pieces of furniture but that such items would be returned immediately afterwards. The tenant further goes on to request that her possessions not be moved again.

I find the landlords' actions of September 12, 2012 to be in violation of the tenant's right to reasonable privacy. I find the evidence shows that the landlords had the tenant's permission to move "something" and not "anything left out". I find that a reasonable person would not interpret the authorization to move "something" to mean the removal or rearrangement of several personal items or the opening of drawers and cupboards. Nor did the landlord replace the items immediately afterward as they had promised. Thus, I find it reasonable that upon the return to the rental unit by the tenant that she felt her privacy had been violated and the landlords had breached their agreement. While the landlords may not have intended to cause harm I find the landlords' failure to recognize and protect the tenant's right to reasonable privacy does not diminish the sense of loss experienced by the tenant.

It was undisputed that after receiving the tenant's email of September 13, 2012 the parties had a verbal conversation as to how to better handle subsequent open houses and showings; however, what the parties agreed upon was in dispute. The landlords submitted that they had the tenant's permission to move things around as long as they did not remove her possessions from the unit. The tenant denied that she gave such authorization to the landlords.

There is little documentation as to what was agreed upon verbally after the first open house; however, upon consideration of the following emails I find the tenant's version of as to what was agreed upon more likely than the landlords' version:

- In an email dated September 16, 2012 the landlords thank the tenant for her co-operation and there is no mention of the landlords rearranging the tenants' possessions.
- On September 18, 2012 the tenant responds to the landlords' email about an upcoming showing on September 20, 2012 by stating that she "will ensure that what we agreed upon is put away again."

The above exchanges lead me to conclude that it is the tenant who was to prepare the unit for the second open house and showing of September 20, 2012. Therefore, I find the landlord's actions of September 20, 2012 which involved rearranging the tenant's possessions to be another violation of privacy and by mixing her clothes and towels together the tenant was unreasonably inconvenienced.

I also find that the landlords' did not have the right to require the tenant to be away from the property during showings or open houses. There is no such requirement in the Act yet there is evidence that the landlords did require such of the tenant:

- In an email dated September 18, 2012 the landlords inform the tenant of a showing scheduled for 5:00 – 6:00 p.m. on September 20, 2012. The Tenant responds asking if she can return home at 5:30 p.m. to which the landlords say "please don't return until 6 pm"
- In an email dated September 20, 2012 the landlords informed the tenant "we will be having an open house this Sunday and you will need to be out between 1:30 and 4:30 pm".

I find that requiring the tenant to be out of her home caused the tenant to suffer a loss of use and enjoyment of her unit for reasons beneficial only to the landlords.

Upon review of the tenant's photographs I found the tenant maintained a clean and tidy unit and I find the landlords' statements to the tenant that she maintained a cluttered home to be unjustified and unwelcome personal opinion. While the tenant may keep more of her possessions in sight than the landlords do in their own home the landlords would be well served to recognize: the limited space in the rental unit; that the rental unit is the tenant's home; and, the tenant's statutory obligation under section 32 is:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

[my emphasis added]

In light of the above, I find the tenant has established that the landlords' actions caused her to suffer a loss of quiet enjoyment of her rental unit. However, I find the tenant's claim for compensation of \$2,500.00 to be excessive her claim amounts to more than two months of rent when the period of loss was 10 days, and the amount claimed was largely unsubstantiated.

I find it reasonable to base the tenant's award on the amount of rent and the timeframe for which the tenant suffered a loss. For the period of September 12, 2012 through September 21, 2012 I award the tenant one-half of her rent or \$180.00 calculated as: [\$1,075.00 x 10/30 days x 50% and rounded up to next dollar]. I further award the \$50.00 filing fee to the tenant as I found her claim to have merit.

The tenant is provided a Monetary Order in the total amount of \$230.00 to serve upon the landlords. The tenant must serve the Monetary Order upon the landlords and enforce as necessary. The tenant is authorized to reduce a future month's rent by this amount if the landlords do not satisfy the Order.

As the property has been sold and I am satisfied the landlords have not since entered the unit without the tenant's prior knowledge I do not suspend or set conditions on the landlord's restricted right to enter. Rather, the landlords remain obligated to comply with section 29 of the Act prior to entering the unit.

Conclusion

The tenant has been awarded \$230.00 and provided a Monetary Order for this amount to serve upon the landlords. The tenant has been authorized to deduct this amount from rent otherwise payable if the landlords do not satisfy the Order.

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: November 23, 2012.

Residential Tenancy Branch