



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, FF*

Introduction

This hearing dealt with applications by both the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order directing the tenant to allow the landlord and /or her agents, access to the rental property pursuant to section 29 of the *Residential Tenancy Act*. Both parties applied for monetary orders for compensation for the loss under the *Act* and for the recovery of the filing fee.

This matter was scheduled to be heard on June 12, 2013. Due to an administrative error, the tenant and the lawyer for the landlord were provided with incorrect codes and did not attend the hearing on June 12, 2013. This hearing was rescheduled for June 28, 2013. Both parties attended the hearing on June 28, 2013, but due to the length of testimony of both parties and the witnesses, the matter was adjourned to be continued on this date – August 13, 2013.

The tenant has made two applications for dispute resolution prior to this application. These matters were heard on October 04, 2012 and December 03, 2012. In a decision dated October 04, 2012, the landlord was ordered to provide at least 24 hour written notice of entry to the unit. The Arbitrator also restricted the right of entry to occur only in the presence of one or both tenants.

Both parties provided extensive documentary evidence. I have considered all the written evidence of both parties and oral testimony provided by the parties and the witnesses but have not necessarily alluded to all the evidence and testimony in this decision. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order? Has the tenant unreasonably denied access to the landlord after appropriate notice? Did the landlord act in accordance with s29 of the *Residential Tenancy Act* and the order of the Arbitrator in the decision dated October 04, 2013? Has the landlord harassed the tenant? Is the tenant entitled to compensation for loss of quiet enjoyment?

Background and Evidence

The landlord testified that the tenancy started on December 01, 2011 initially as a fixed term tenancy which continued as a month to month tenancy upon the completion of the fixed term. The monthly rent is \$1,950.00.

About the middle of 2012, the landlord listed the property for sale. The parties could not come to an agreement regarding dates and times of showings. The landlord served the tenant with a notice to end tenancy on August 30, 2012. The tenant filed an application to dispute it and the matter was heard on October 04, 2012. The notice was set aside and the landlord was ordered to provide at least 24 hours written notice of entry into the unit. The entry into the unit was further restricted to occur only when at least one of the two tenants was present in the unit.

The parties continued to have problems with scheduling viewings. On October 19, 2012, the landlord served a second notice to end tenancy, which was also disputed by the tenant and set aside on December 03, 2012. The tenant was awarded \$500.00 towards the loss of income he incurred for the time spent defending himself against the notices.

The landlord filed a copy of an email from a prospective purchaser's realtor to the listing realtor PM, regarding his clients who had viewed the home on October 22, 2012 and had expressed interest in the property. The prospective buyers wished to make an offer after a second viewing. The letter is dated November 22, 2012 and describes four unsuccessful attempts to view the unit for a second time. The landlord had given the tenant at least 24 hours written notice on all four occasions, but upon attending the unit, there was no one home. After the third attempt, the tenant informed the listing realtor that there would be no showings until November 01, 2012. A fourth attempt was made on November 01 which was also unsuccessful.

The purchaser's agent informed the listing agent that his clients grew tired and frustrated and decided not to put in an offer as they were expecting a child and wanted to finalize a purchase as soon as possible. They looked elsewhere and had found another property that they were able to view and purchase. The listing realtor PM, testified that because she was unable to obtain a viewing time the landlord lost this opportunity to sell the rental unit.

The tenant, who is a realtor by profession, testified that on February 14, 2013, he had a phone conversation with the landlord in which he offered to list the unit for her. He stated that the landlord seemed pleased with the idea and said "*sounds good*".

The tenant agreed that the landlord had informed him that she would discuss the proposal with her friend and get back to the tenant. The tenant stated that he did not hear back from the landlord.

On February 21, 2013, shortly after the above mentioned phone conversation, the landlord informed the tenant that she had hired a property manager DK to look after the dispute rental unit. The tenant made an appointment to meet the property manager on February 26, 2013. At that meeting the parties agreed to an appointment for the property manager and his co worker GJ to inspect the rental unit on March 01, 2013.

In his written submission DK states that during the meeting on February 26, 2013, the tenant indicated that he had no plans to cooperate with the landlord or her representatives in order to facilitate anything to do with selling the property. He clarified that he would deny entry to any of the landlord's representatives for the purpose of viewing or selling the rental property but would allow entry for conducting property inspections relevant to his tenancy e.g. to address any repair or maintenance issues.

On February 28, 2013, prior to the scheduled in suite inspection, the tenant left a voice mail message for the landlord. The landlord provided a transcript of the message and also played the message during the conference call. The tenant acknowledged that he had left the message on the voicemail of the landlord.

In the message the tenant states that he has an order from the Residential Tenancy Branch *"not allowing anyone in this property as long as I am living here. PM (listing agent) or any associate of hers will never have access to this property for any reason. Or even if you list it with her again, you know, she is not going to be able to set up any showings."*

The message continues and towards the end the tenant states *"So, anyway, I am going to leave my offer open to you to still do the right thing. If you want to sell this place, you let me know and I'll get it sold for you and we can all move on. Um, so whatever happens from this forward is all up to you LT(landlord). You just better make sure you're ready to deal with the outcome and any consequences of continuing to make bad decisions or listening to bad advice, whichever it is."*

During the hearing the tenant confirmed that he felt that his offer to list would benefit the landlord and her decision to hire a property manager and have PM act as her agent was a *"bad decision"*.

The tenant met with the two property managers GJ and DK, on March 01, 2013 in the rental unit. Both managers testified at the hearing. GJ stated that the tenant informed him that he would not give the listing agent, PM access to the rental unit.

The tenant stated that even though he had not met PM in person, he did not want to interact with her as he believed that she was not suitable to market the rental unit. The tenant added that during the hearing on December 03, 2012, the Arbitrator had suggested that the landlord not use PM's realtor services. The tenant agreed that this was not stated in the decision and was only discussed during the hearing.

The landlord's realtor PM, also testified about the second prospective purchaser's offer that was written on March 09, 2013 by the purchaser's agent and accepted with subjects, on March 14, 2013. One of the subjects was a viewing of the rental unit. PM explained that the prospective buyer had seen a similar unit in the complex and liked it but preferred the location of the dispute rental unit.

On March 16, 2013 the landlord's lawyer served the tenant with a letter requesting an appointment to show the unit, by process server. The letter listed 11 options between March 18 and 23. The tenant agreed that he received the letter and also agreed that he did not respond to it because he was out of town on most of the dates and was not available to show the unit.

On March 19, 2013, the landlord's lawyer served the tenant with a second letter requesting an appointment to show the unit. This letter had five options in March and several options in April e.g. Monday to Friday 12:00 pm to 1:00 pm and 5:30 pm to 7:30 pm and on Saturday and Sunday 9:00 am to 5:00 pm.

The tenant responded on March 21, 2013 by asking to see a copy of the contract showing the accepted offer which was subject to a viewing of the rental unit. The landlord complied.

In his written submission, the tenant stated that the offer was a "*set up*" to harass him. His reasons for arriving at this conclusion were that it was not possible for a purchaser to put in an offer on a property that was not listed and had not been viewed. The tenant also stated that if the landlord was in financial difficulty, she should not have hired a lawyer to represent her.

The landlord filed copies of the accepted offer and also filed a letter from the prospective purchaser confirming the sequence of events that led up to the accepted offer, as testified to by the landlord.

On March 25, 2013, the tenant served the landlord with a notice of this hearing by email and wrote *"Once this matter is resolved, I will gladly entertain some date options for a viewing that you want to set up."*

On March 27, 2013, the landlord replied and explained to the tenant that the prospective buyer was willing to extend the closing date, pending the viewing of the property. The landlord gave the tenant additional options with dates and times for a visit. The landlord also attached copies of the initial and then current offer to purchase after obtaining permission from the purchaser. Personal and confidential financial information was blacked out. The documents indicate that one of the conditions of the offer was the purchaser's ability to view the interior of the rental property and obtain a property inspection. The tenant did not respond to the request.

On April 19, 2013 the landlord applied for dispute resolution with a request for an early date of hearing, to enable the landlord to retain this buyer and consolidate the sale.

However since the hearing could not be scheduled for a date prior to June 12, 2013, the purchaser decided not to follow up on the accepted offer of sale. In a letter dated May 21, 2013, the prospective buyer states *"The denial of access by BL(tenant) and the RTB arbitration not being heard until June 2013 has caused me to abandon the offer to purchase on this property and move on to search for another property"*.

On May 24, 2013, the landlord amended her application to include a monetary claim of \$25, 000.00. A letter accompanying the amended application states that the offer to purchase the property had since collapsed due to the tenant's failure to allow access to the property.

The landlord testified that she has undergone a great deal of stress dealing with the tenant which has resulted in mental depression and ill health. In addition, she has suffered financially. The landlord stated that she is unable to drive or socialize because she is constantly worrying about her financial status and the difficulty of interacting with the tenant. She also stated that after attempts to handle her affairs herself failed, she had to hire a property manager and a lawyer and now has incurred additional legal and other costs. The landlord stated that she is undergoing therapy at a considerable cost and has had to stop treatment for financial reasons.

The landlord filed a letter from her doctor who states that the landlord's anxiety and depression has increased in frequency and severity due to stress caused by her tenant. The landlord also reiterated that she lost two potential buyers due to the non cooperation of the tenant with regard to showing the unit.

The landlord is applying for compensation in the amount of \$25,000.00 and for an order granting the landlord and/or her agents, access to the rental unit for the purpose of showing the unit to prospective purchasers and conducting property inspections.

The tenant has applied for the return of rent for the period of July 2012 to June 2013 in the amount of \$23,400.00. He stated that the landlord threatened him, harassed him and lied to him. The tenant states in his written submission that the property manager harassed him with requests to conduct inspections every three months pursuant to the city's bylaws.

The tenant also stated that the alleged accepted offer that the landlord received was a set up and a form of harassment. He stated that the alleged purchaser had not viewed the unit at all and therefore it was unlikely that the purchaser had put in an offer. The tenant stated that he received the landlord's notice of hearing while he was away on vacation and had to cut short his trip thereby incurring additional costs and unnecessary disruption to his plans. The tenant further added that the landlord seemed happy with his offer to act as her agent and sell the unit for her, but did not follow through.

Analysis

Landlord's claim: \$25,000.00

Based on the documentary evidence and oral testimony of both parties I find that the landlord was ordered to provide the tenant with at least 24 hours notice to enter the rental unit and conduct inspections or viewings in the presence of one or both tenants. The landlord filed adequate evidence to demonstrate that she complied with the arbitrator's order. I find that the landlord provided several options to the tenant but the tenant could not find one that suited him. In addition, the tenant agreed that he did not respond to the landlord's notices. Due to the restriction placed on the landlord's entry into the suite, it was not sufficient for the landlord to provide notice alone. The landlord required the tenant to be present during the visit and because the tenant did not respond to the landlord's requests, the landlord was unable to show the rental unit to prospective buyers.

The landlord provided sufficient evidence to support her testimony that a prospective offer to purchase was received and subsequently collapsed due to the inability of the purchaser to view the rental unit. Even though the landlord has proven that the pending sale did not materialize partly due to the tenant's unwillingness to show the unit, I find that the sale was subject to the viewing and that the offer to purchase could also have collapsed, if the purchaser was not satisfied with the condition of the unit.

The landlord also provided oral testimony regarding the toll that the interaction with the tenant has taken on her health and filed a medical letter to support her testimony.

Based on the testimony and documents filed into evidence by both parties, I find that the landlord was compliant with the order that was given to her at the hearing on October 04, 2013. Despite giving the tenant multiple options, the tenant did not respond to the notice and did not cooperate with the landlord. The tenant specifically advised the landlord's property managers, DK and GJ that he had no plans to cooperate with the landlord or any of her representatives in order to facilitate anything to do with selling the property.

The landlord is at liberty to choose her agent for the purpose of listing and selling her property and the tenant is not in a position to dictate who the landlord must hire for this purpose.

I hereby order the tenant to respond to the landlord's request for a viewing with dates and times that are convenient to the tenant. The tenant must respond in a timely manner and the response must be made prior to the date and time of the first viewing that is proposed by the landlord.

Based on the above and on a balance of probabilities, I find that it is more likely than not that the landlord lost at least one opportunity to sell her unit due to the inability to show the unit to prospective buyers. I further find that the landlord's health suffered as a result of the stress associated with attempting to coordinate viewing dates and times with the tenant and therefore the landlord had to use the services of a lawyer and a property manager.

Residential Tenancy Policy Guideline #16 states that an arbitrator can award for the value of a general loss where it is not possible to place an actual value on the loss. Accordingly an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on my findings, I award the landlord \$5,000.00 as compensation for the loss of a potential sale, for the added legal and property management costs incurred by her and for the deterioration of her health caused by the stress associated with making arrangements directly and indirectly with the tenant, for appointments to view the rental unit. Since the landlord has proven her case she is also entitled to the recovery of the filing fee of \$100.00

Tenant's claim - \$23,400.00

Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”. As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. Every tenancy agreement contains an implied covenant of quiet enjoyment.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control. Frequent and ongoing interference by the landlord or if preventable by the landlord and the landlord stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment

Based on the documentary evidence and oral testimony of both parties and the witnesses, I find that the landlord acted in accordance with the section 29 of the *Residential Tenancy Act* and the Arbitrator's order by giving the tenant adequate notice and multiple options for appointments to view the rental unit. Requesting times for viewings or inspections according to legislation and according to the arbitrator's orders, does not fit the definition of harassment.

The tenant also stated that the landlord threatened and lied to him. Based on the tenant's verbal testimony, I find that the tenant understood that the landlord would be allowing him to sell the unit for her and was disappointed when she hired a property manager and realtor to take care of business. I further find that the landlord did not agree to hire the tenant to act as her realtor. She informed him that she would get back to him after discussing the proposal with a friend. The tenant felt that the landlord had lied to him, when he found out that she had hired a property manager and a realtor.

The tenant also stated that the accepted offer was a “set up” to harass him. The landlord filed sufficient evidence to establish that she had an accepted offer and therefore I find that this was not a ploy on the part of the landlord to harass the tenant.

The tenant also stated that the property manager harassed him by requesting inspections every three months as per the local bylaws. I find that the property manager did not contravene legislation by requesting inspections.

I further find that the manager acted in accordance with section 29 of the *Residential Tenancy Act* and in accordance with the order of the Arbitrator, dated October 04, 2013.

With regard to the tenant's monetary claim for compensation for the loss of quiet enjoyment, I have reviewed the submissions of both parties and I find that the last twelve months of the tenancy were very stressful on both parties for different reasons. Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support his claim of compensation for harassment and loss of quiet enjoyment and therefore the tenant's claim for compensation is dismissed.

Overall, the landlord has established a claim for \$5,100.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$5,100.00**.

I order the tenant to respond to the landlord's request for appointments for inspections and/or to show the rental unit to prospective buyers within a timely manner and to allow access to the landlord and/or her designated agents for the purpose of showing the rental unit to prospective buyers

The tenant's application is dismissed in its entirety.

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 22, 2013

Residential Tenancy Branch

