



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC FF

Introduction

This was an application for a Monetary Order or rent reduction as a result of a loss of quiet enjoyment.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant provided the tracking number for the registered mail which the tenant testified was received by the landlord. The tenant was given full opportunity to be heard, to present evidence and to make submissions. The tenant acknowledged they did not provide any further evidence other than that contained in the original application.

Issue(s) to be Decided

Are the tenants entitled to compensation?

Background and Evidence

The tenancy ended on or about September 15, 2013. During the tenancy the payable monthly rent was \$4400.00. The parties participated in a hearing on October 02, 2013, resulting in a monetary order for the landlord in the amount of \$14,700.00, which the tenant testified they have not satisfied to date.

The tenant testified that between the months of May and August 2013, they were subjected to repeated intrusions without warnings or notice to show the house they rented to prospective buyers. During this same period the landlord attempted to sell the house along with their selling agent. The tenant testified that they were given short

notice on many occasions to make the house presentable for prospective buyers, but that on most occasions the selling agent would show up unannounced with prospective buyers – sometimes several times per day and the tenant was completely unprepared; and, despite their cooperation, felt embarrassed. On the occasions that the tenants received prior notice, the tenants claimed they scrambled to make the house presentable. The tenant testified that when they shared their concerns with the landlord to give them some structure or system for showings of the house, the landlord ignored their request and also would not consider any compensation for their loss of quiet enjoyment of the home. The tenants testified that instead, the landlord eventually sold the house with what they claim was their help and later sought to recover all rent owed to the end of the tenancy.

The tenant testified that between May and August 2013 the landlord showed the house over 39 times over all days of the week and that most of those times the showings were lengthy intrusions in their family life and quiet enjoyment of the unit.

Analysis

I find that the tenant's testimony was matter of fact and unembellished. I further accept the tenants' undisputed testimony and their evidence that the landlord's conduct, inclusive of their agent's conduct was not mindful of the tenant's right to quiet enjoyment of their rental unit.

Section 28 of the Residential Tenancy Act 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;

Policy Guideline #6 dealing with loss of quiet enjoyment includes the following:

This guideline deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. At common law, the covenant of quiet enjoyment "promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy."

Every tenancy agreement contains an implied 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.

A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

- **Claim for damages**

In determining the amount by which the value of the tenancy has been reduced, the Arbitrator 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.

I accept the tenant's undisputed testimony that the landlord's conduct and that of their agent(s) in pursuit of selling the rental unit was intrusive, annoying and neglectful of the landlord's limited right to access, and the tenant's right to quiet enjoyment. As a result, I grant the tenant compensation reflecting a reduction in the value of the tenancy agreement in the nominal amount of one month's rent or \$4400.00. I further find the tenant is entitled to recover their filing fee of \$100.00 for a total award of \$4500.00.

Conclusion

I grant the tenant an Order under Section 67 of the Act for the amount of **\$4500.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court. The tenant may use this Order to offset a liability owed to the landlord via a prior Order of an Arbitrator.

This Decision is final and binding on both parties.

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 10, 2013

Residential Tenancy Branch