



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, SS, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss – Section 67;
2. An Order for the return of the security deposit – Section 38;
3. An Order for substituted service – Section 71;
4. An Order that the landlord comply with the Act – Section 62;
5. An Order setting conditions on the landlord's right to enter the unit – Section 70;
6. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matter

At the onset of the Hearing the Tenant stated that they had moved out of the rental unit. As the tenancy has ended, I dismiss the Tenant's claim for orders in relation to the landlord's compliance and conditions on the Landlord's right to enter the unit as these claims require an ongoing tenancy. As the Tenant applied for a return of the security deposit prior to the end of the tenancy, I dismiss this claim with leave to reapply. The Tenant was not sure what the claim for substituted service was in relation to. I therefore dismiss this claim.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Background and Evidence

The tenancy started on February 1, 2013 and ended on May 1, 2014. Rent of \$2,000.00 was payable monthly and at the outset of the tenancy the Landlord collected \$1,000.00 as a security deposit.

The Tenant states that although at the time of signing the tenancy agreement they knew the unit was listed for sale and would continue to be listed, the Tenants did not expect constant showings. The Tenant states that they were harassed about purchasing the unit themselves and then by constant texts and calls for showings. The Tenant states that they received calls about once a month and that in November 2013 they were subjected to almost daily calls to request showings. The Tenant states that they did not agree to any showings in November 2013 and that no showing occurred that month. The Tenant states that while the Landlord only called once a week in December that they were sent more frequent emails and texts. The Tenant states that there was only one showing in December 2013.

The Tenant states that the Landlord once informed the Tenants that she would use her own key to enter the unit and that she could do this anytime. The Tenant clarified this statement by stating that this only occurred once and that the Landlord made this statement when the Tenant refused a showing on the date requested as the Tenants would not be home that day. The Tenant states that the Landlord once asked the Tenants to wait in the lobby while showing the apartment and that this caused an inconvenience with their new born baby.

The Tenant states that on March 8, 2014 the Tenants informed the Landlord that the Landlord was not welcome any longer, that the Landlord was not authorized to enter the unit and that the Landlord should call the Residential Tenancy Branch. The Tenant states that the Landlord finally started proper notifications in April 2014. The Tenant

states that although they believe that the stress of the harassment caused medical problems, such as problems with breastfeeding and asthma, they did not provide any medical reports to substantiate the cause of the medical problems. The Tenants state that they would have preferred a settled schedule for showings on predetermined dates that occurred once or twice a month but that the Landlord did not care about the Tenant's own scheduling preferences. The Tenant claims \$24,000.00 for harassment.

The Landlord states that that between November 2013 and February 2014 the Landlord made approximately 14 calls to request showings and that the Landlord would follow up these requests with emails 3 or 4 days later. The Landlord states that while they knew they could serve a notice to enter and show the unit but that they were trying to be more flexible with the Tenants and believed that it was less intrusive to communicate with emails. The Landlord states that they were trying to avoid forcing a showing on the Tenants. The Landlord states that after serving the Tenants with the first formal notice for March 19, 2014 the showing resulted in the sale of the unit. The Landlord's legal counsel argues that the Tenant has failed to show any evidence of harassment and has failed to establish cause or costs claimed.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Section 29 of the Act provides that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;

- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

The primary element of harassment is ongoing or repeated unwelcome and vexatious activity of an offensive nature by the harasser. There is no evidence that the Landlord acted to enter the unit without permission. The evidence also indicates that there were very few showings in the unit. I note that the evidence only indicates a few calls and that the major problem appears to be the texts and emails containing requests for showings. There is no evidence to suggest that the content of these communications were offensive and I note that the Tenant is at all times in control of whether to receive or block texts or emails. Noting that the Landlord was well within their right to have exercised more stringent control over access to the Tenant's unit, I accept that the Landlord was attempting to provide greater flexibility to the Tenants by communicating with the Tenants to reach mutually agreeable showing times. Overall, and considering the evidence of both Parties, I do not find that the Tenant has substantiated harassment by the Landlord and I therefore dismiss the claim for compensation.

Conclusion

The Tenant's application is dismissed.

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: May 28, 2014

Residential Tenancy Branch

