



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LRE, MNDC, O, OLC, FF

### Introduction

This hearing dealt with an application by the tenants for an order restricting the landlord's right to access the unit, an order compelling the landlord to comply with the tenancy agreement and a monetary order and a cross-application by the landlords for a monetary order and an order of entry. Both parties participated in the conference call hearing.

At the hearing, the parties settled a number of the matters at issue. I have recorded this agreement below. The substance of this decision addresses those issues on which the parties were unable to reach a resolution.

### Issues to be Decided

Should the landlords be permitted to show the unit to prospective purchasers more than once each week?

Should the landlord DN be permitted to access the property at all?

Are the tenants entitled to a monetary order as claimed?

Are the landlords entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the landlords purchased the rental unit, in which the tenants already resided, in the fall of 2013. The tenant PB acted as the realtor, representing the vendor in that transaction. The parties entered into a new fixed term agreement which will expire on September 30, 2015, at which time the tenants are obligated to vacate the rental unit.

The tenants testified that at the beginning of the tenancy, when they were negotiating the terms of the tenancy agreement with the landlords, they drafted a term by which the landlords agreed not to list the property for sale during the term of the tenancy. The term was not included in the final tenancy agreement which was signed by the parties, but the tenants insisted that they had a verbal agreement to that effect in place. The landlords denied having made that verbal agreement. The landlords are now in the process of listing the property for sale and seek access for their realtor to obtain data about the unit for the purposes of advertising as well as access for showing the unit to prospective purchasers. The tenants seek an order prohibiting the landlords from listing the property and restricting their access to the rental unit.

At the hearing, I made an oral decision regarding the alleged verbal agreement. Because the agreement was not reduced to writing and because the landlords denied having made such a representation, I found insufficient evidence to prove that such an agreement existed and I found that the landlords were free to list the property. I dismissed the claim of the tenants for an order preventing the landlords from listing the property.

The parties were in a dispute resolution hearing on March 4 and in a decision issued on March 5 (the "March Decision"), the arbitrator from that hearing ordered the landlord to strictly comply with sections 28 and 29 of the Act and found that the landlords' realtor was not a landlord for purposes of giving notice of entry. The landlords are therefore obligated to give the tenants notice of entry directly rather than permitting their realtor to give notice on their behalf.

At the hearing, the parties agreed that the male landlord DN will not enter the rental unit during the tenancy and the realtor will not attend the rental unit unless he is accompanied by the landlords' son or daughter. They further agreed that the tenants will provide photographs of the interior of the rental unit to the realtor which PB had used when he was the listing agent for the rental unit. They further agreed that no open houses will take place during the tenancy, that the realtor may show the unit to prospective purchasers each Sunday afternoon and that the tenants will not interfere with inspections which take place every other month.

The tenants claim that the landlords are in breach of the March Decision because the realtor has hand-written a notice of entry which the landlords then signed and delivered to the tenants. The tenants maintain that the realtor should have no part in writing or serving notices. The landlords maintained that their command of the English language is limited and they require assistance from their realtor or their children to effectively communicate with the tenants.

The tenants have agreed that the realtor can access the unit every Sunday afternoon for 1 hour to show the rental unit to prospective purchasers, but say that week days are family time and therefore seek an order prohibiting the realtor from showing the unit during the week. The realtor testified that in order to effectively market the unit, it must be available for viewing both on weekends and during the week.

The tenants seek a monetary award of \$500.00 because they have had to take time away from work to deal with issues related to the landlords' entry into the rental unit.

The landlords seek an order permitting their realtor to enter to take measurements of the unit which the tenants have disputed. They also ask that I direct the tenants to stop their objections to the male landlord DN from being anywhere on the residential property. They agreed that DN would not enter the rental unit, but the tenants insist that he should not be permitted to be outside the unit as they have been in frequent conflict with DN. At the hearing the parties resolved the issue of photographs, which the tenants did not want taken in the unit, but the tenants appeared to continue their objections to him entering the unit to take measurements.

The landlords seek a monetary award of \$4,999.00 to compensate them for their mental distress.

Both parties seek to recover the filing fees paid to bring their applications.

### Analysis

First addressing the tenants' claims, I find that as long as the landlords have signed a notice of entry, it may be written by the realtor or anyone else and may also be delivered by the realtor or some other third party. The March Decision does not require the landlords to pen notices of entry with their own hand or to deliver such notices. The spirit of the March Decision is clearly to ensure that the landlords are aware of the notices of entry served on the tenants and is not designed to prevent them from utilizing the services of third parties. I find that the landlords have not breached the March Decision.

I find it appropriate to allow the realtor to show the unit for 2 hours each week, once on Sunday and once during the week. I find that 2 hours each week is not an unreasonable time and that preventing the landlord from showing the unit to parties who may be unavailable on a Sunday afternoon may unnecessarily restrict the pool of prospective purchasers. I encourage the parties to work cooperatively to find a day and time which is convenient for all. If the parties are unable to agree, the landlords may give at least 24 hours written notice and enter the unit for the purpose of showing it for

no more than one hour during the week despite the tenants' disagreement. **In weeks in which a bi-monthly inspection is occurring, the landlords should limit the showings to prospective purchasers to just once in that week.** In other words, if the unit is shown to prospective purchasers on Sunday 7 and the landlord inspects the unit on Wednesday, June 10, another showing of the unit should not take place until Sunday, June 14. The inspection would take the place of the second showing. The purpose of implementing this restriction is to keep the landlords from entering the unit more than twice each week unless there is a repair issue which requires their attendance.

I dismiss the tenants' claim requesting compensation for time spent away from work to deal with tenancy issues. I find that the tenants have been somewhat unreasonable in their demands, relying on a verbal agreement which cannot be proven and refusing the landlords' access despite their having complied with the legal requirements for access and with the March Decision.

Turning to the landlords' claim, I find that the realtor should be given access to the unit to take measurements and do whatever else is required at the unit to ensure that his listing is accurate and complete. It would be pointless to order the tenants to allow the realtor to show the unit if he is unable to first accurately list the details of the unit. Proper written notice should be given by the landlords and this entry into the unit would replace one of the two entries per week allowed to the landlord for the purposes of showing the unit.

The parties have agreed that DN will not enter into the unit during the tenancy, but I see no reason why DN cannot be outside the unit on the residential property. The tenants testified that they take strong objection to DN making statements about losing a significant amount of money on a sale if the tenants restrict access to the realtor, but the tenants are unreasonable in taking offense to this statement as it is quite true that the tenants could cause such a loss were their actions to prevent the landlords from exercising their lawful right to list and sell the property. I appreciate that there is a history of tension between the tenants and DN, but I find that DN being outside the rental unit should not aggravate the tenants. DN is instructed to not interfere with the tenants' personal belongings in any way but he may access the outside area of the residential property. I encourage both parties to measure their words carefully and refrain from accusatory statements in order to promote a better relationship in the future.

I dismiss the landlords' monetary claim for compensation for mental distress. The landlords are not entitled to quiet enjoyment under the Act and even if they were, I do

not find that the tenants' actions have been so extreme that compensation would be warranted.

I dismiss the tenants' claim in its entirety. I dismiss the landlords' monetary claim and grant them entry to the unit and the residential property as outlined above.

As the landlords have been partially successful in their claim, I find they should recover one half, or \$25.00, of their filing fee. The tenants are ordered to pay the landlords \$25.00 no later than June 30, 2015.

### Conclusion

The claims of the parties are dismissed with the exception of the landlords' claim for an order permitting them to access the unit. The tenants will provide access to the realtor each Sunday afternoon for 1 hour and once each week day or week night for 1 hour. The male landlord DN may access the outside of the residential property when he is accompanied by his wife or children. The tenants are ordered to pay the landlords \$25.00 which represents one half of the landlords' filing fee.

The parties have agreed to the following terms:

- DN will not enter the rental unit during the tenancy;
- The realtor will not attend the rental unit unless accompanied by the landlords' son or daughter;
- The tenants will provide to the realtor photographs of the interior of the rental unit;
- No open houses will take place during the tenancy;
- The tenants will not interfere with the inspections which are to take place every other month pursuant to the terms of the tenancy agreement.

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 14, 2015

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Residential Tenancy Branch

