Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, MNDC, MNSD, RR, FF, SS, OPR, MNR,FF

Introduction
This hearing dealt with two related applications – one by the tenants and one by the landlord – each for multiple heads of relief. Most of their respective applications were dealt with in the Interim Decision dated August 26. The hearing proceeded on the landlord's application for the July rent and the tenants' application for loss of quiet enjoyment. Both parties also made claims against the security deposit and pet damage deposit. Both parties gave affirmed evidence.

The female landlord argued that the male person named as a respondent on the tenants' application should not have been named as a landlord as they are not married and the property is registered in her name alone; it was only her name on the tenancy agreement; and they are not married. It must be stated that the definition of "landlord' in the Residential Tenancy Act is considerable broader than just the property owner. However, given the nature of the decision I have reached, it is not necessary to determine this issue. As a result, the name of the male respondent is still in the style of cause.

Issue(s) to be Decided
- Is either party entitled to a monetary order and, if so, in what amount?
- What order should be made with respect to the security deposit and pet damage deposit?

Background and Evidence
This tenancy commenced August 1, 2014 as a one year fixed term tenancy. The monthly rent of $2000.00 included water, hydro and gas. The tenants paid a security deposit of $1000.00 and a pet damage deposit of $200.00. The rental unit is the upper level of a house. There is a second rental unit in the lower level. There is also a shared laundry room for the two units.
The parties negotiated and signed a new tenancy agreement for a second one year term for the period August 1, 2015 to July 31, 2016. The new agreement contained

some new provisions but the rent remained the same. The tenancy agreement included a clause requiring the tenants to vacate at the end of the term.

Both tenants work from home. They share the home with their two young daughters.

The landlord decided to list the house for sale. On January 21, 2016 the listing agent advised the tenants by e-mail that the home would be going on the market on Monday, January 25. She pointed out that their neighbourhood "continued to be a VERY popular area and I expect there is going to be a frenzy of action" and said "I apologize in advance!"

She also told the tenants that: "Some times people will knock on the door when they see the For Sale Sign. Please disregard these rude and obnoxious people. They should be referred to me and not be bothering you. You might see people walking the property as well. Tell them that you will call the police if they don't leave."

The listing agent asked the tenants to confirm that e-mail was their preferred form of communication. She also asks if they would be agreeable to showings with less than twenty-four hours notice.

The e-mail concludes with:

> "We are placing it out on the market for offers to be presented on Sunday at 6:00 pm. I would like to host an open house the following Saturday and Sunday (Jan 30 and 31st) from 1:00 pm – 3:00 pm . . .
>
> Thank you in advance for working together with us. I hope that it will only be a week of interruption and then you can get back to your regular routine."

At first the tenants did agree to notice of viewings by e-mail but were overwhelmed by the onslaught of requests. The parties filed copies of the e-mail correspondence. Each request was for a separate viewing; each for a different time; and some were requests to change the time for a viewing already requested. The volume of this correspondence is significant and was difficult to decipher.

On January 25 the tenants expressed concern about showings proceeding that day because one of the children was sick. The realtor's response was that she had given proper notice and that she hoped they would receive offers by January 31 and that would be the end of the selling process.

In a subsequent e-mail the tenants agreed to the showings scheduled for the following day. They also agreed to the open houses proceeding on the Saturday and Sunday.

The next day four different groups viewed the unit in three separate time slots: 12:00 to 1:00 pm; 1:30 to 2:30 pm; and 5:00 t0 6:00 pm. In addition, they received several e-mail requests for additional showings. The tenants' patience wore out. They wrote the landlord and the listing agent: and offered a showing schedule of Monday from 10:00 am to 3:00 pm; Friday from 10:00 am to 3:00 pm; and an open house every Saturday from 11:00 am to 3:00 pm.

They described the situation at the rental unit as follows:

> "Additionally, there have been four viewings thus far today – and that is not counting the evening viewing. Please extend to the Realtors that they can't just walk in without a set appointment. Furthermore, please inform the Realtors that they should ring the doorbell in the future, instead of just opening our front door and yelling "Hello!".

The landlord and the listing agent never responded to the request for a viewing scheduled. Instead they provided the tenants with a link to the Residential Tenancy Branch website emphasizing that a landlord may show the house with or without the tenants' consent, as long as proper notice was given.

On January 27 some groups were denied access by the tenants.

From then on the relationship between the landlord and the tenants was confrontational and legalistic. The tenants refused to respond to e-mail requests; filed an application for dispute resolution asking for limitations on the landlord's right of entry; and insisted on receiving written notice delivered to the rental unit for every showing. The landlord ignored the tenants' request for a showing schedule; focused on the part of the legislation that says a landlord who has given proper notice may enter a rental unit whether the tenant consents or not; and frequently reminded the tenants that obstructing showings was a ground for ending a tenancy. Both parties were frustrated and upset and both parties expressed those emotions.

Meanwhile, the property did not sell in a week as predicted by the real estate agent.

The landlord testified that in February her agent showed the property on the following occasions:

> February 3 – one group at 6:00 pm

February 4 – one group scheduled for 10:30 am cancelled at the last minute but the showing scheduled for 10:45 am went ahead.
February 5 – one group at 1:00 and another group at 2:00 pm. A third group was scheduled for 4:30 but did not show.
February 7 – showings from 11:00am to 12:30 am. The landlord did not say how many groups came through.
February 10 – two groups at 11:00 am.
February 12 – one group at 2:00 pm.
February 13 – one group at 10:30 am. A showing that was scheduled for 1:30 pm was cancelled.
February 14 – one group at 1:15 pm.
February 20 – one group at 4:00 pm.
February 22 – one group at 4:00 pm.
February 23 – the group that was scheduled for 11:00 am cancelled.
February 24 – the group that was scheduled for 11:30 am cancelled.
February 25 – one group at 9:00 am.
February 26 – one group at 1:15pm.
February 27 – one group at 11:00 am and another group at 1:00 pm.
February 28 – once group at 1:15 and another at 1:30 pm.

The landlord testified that written notice of entry was given for each showing; the tenants questioned that statement. The tenants also said it felt like there were more showings than the landlord stated but, although they were asked repeatedly for details of the showings at the unit in February, the tenants were never able to provide a list of actual showings or a concise summary of the actual number of showings.

The tenants testified that although they did receive some written notices from the listing agent many other agents would show up without any notice or appointment asking to see the unit and that this happened on an almost daily basis. Often the female tenant, who does not like confrontation, would let them in; the male tenant would turn them away. Some groups even walked right into the unit as if it were empty – one group arrived just as one of the tenants was getting out of the shower. The tenants testified that the activity became so bad that his neighbour put a sign on his door that read: “No, I’m not selling my house.” The landlord said she had no idea there were so many people knocking on the door.

The tenants testified that these interruptions made it very difficult for them to do their work and that further, the stress of the showings and the conflict with the landlord had a negative effect on the female tenant’s health and caused anxiety for their children.

Finally, the landlord accepted an offer on March 1 and the conditions on the offer were removed on March 8. There were no showings after March 1.

There continued to be friction between the landlord and the tenants. The tenants withheld payment of the July rent as compensation for their grievances.

The tenants moved out of the rental unit on July 31 as required by the tenancy agreement and the purchasers took possession later that afternoon. The landlord confirmed that her only claim against the security deposit and pet damage deposit was for the July rent.

Analysis

The *Residential Tenancy Act* gives both the landlord and the tenant rights, which must be balanced against the other.

A landlord is entitled to sell their property and as part of that process to show the rental unit without undue interference from the tenant. Section 29 of the *Residential Tenancy Act* does allow a landlord to enter a rental unit upon giving 24 hours written notice that includes the purpose of the entry, which must be reasonable, and the date and time of the entry, which must be between 8:00 am and 9:00 pm, unless the tenant otherwise agrees.

On the other hand, section 28 provides the tenant with the right of quiet enjoyment which includes reasonable privacy and freedom from unreasonable disturbance.

Residential Tenancy Policy Guideline 6: Right to Quiet Enjoyment explains the balance between the landlord's right of entry and the tenant's right to quiet enjoyment in the context of repairs to the rent unit but the same analysis applies to the landlord's right to sell the rental unit:

> "It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however, a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations. . . .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."

The tenants' claim is really a claim in contract for loss of a portion of the value of the tenancy that they paid for. As explained in *Residential Tenancy Policy Guideline 16: Claims in Damages:*

> "Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected."

Section 7(2) requires any claimant to take all reasonable measures to mitigate their damages.

There are two striking features about the list of showings provided in the landlord's oral testimony:

- the number of showings; and,
- the randomness of the dates and times of the showings.

There was no predictability for the tenants from day-to-day, especially if they were trying to accommodate the showings by being absent from the rental unit during the showings. This randomness would be even more difficult when you were trying to work from home, as most of these viewings were during working hours. If you add the unsolicited calls and entries from people who had not made arrangements with the listing agent, it would have been a very difficult and stressful situation for the residents of the home.

I have no difficulty in finding that the tenants did experience a loss of quiet enjoyment and that the value of their tenancy was reduced as a result.

I also find that the tenants did try, very early on, to mitigate their damages by proposing a very reasonable viewing schedule. A schedule is what the Residential Tenancy Branch suggests on its' website and in other public information as a good means of balancing the rights of the landlord and the tenant. The landlord and/or her real estate agent chose not to employ this mechanism, even as time dragged on. I find that there was little consideration of the tenants' situation and even less effort to manage the disruption to the tenants, who were paying to live in the unit.

I find that the value of the tenancy was reduced by half and I award the tenants the sum of $1000.00 as compensation for the loss of quiet enjoyment.

The legislation does not allow a tenant to withhold rent except in very specific circumstances, which do not exist here. I award the landlord the sum of $2000.00 for the July rent.

As both parties were at least partially successful on their respective applications, no order for reimbursement of the filing fee by one party to the other will be made.

Setting the two awards off against the other, I find that the landlord is entitled to a monetary order in the amount of $1000.00. Pursuant to section 72(2) I order that the landlord may retain the security deposit of $1000.00 in full satisfaction of the claim.

The landlord testified that she had no other claim against the security deposit or pet damage deposit. Accordingly, I order that the landlord return the pet damage deposit of $200.00 to the tenants forthwith. If payment is not made, the tenants may enforce the monetary order that is included with their copy of the decision in the Provincial Court.

Conclusion

a. Off-setting monetary awards have been made to both parties, as set out above.
b. Orders regarding the security deposit and pet damage deposit have also been made.

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: October 04, 2016

Residential Tenancy Branch