



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC OLC LRE FF O

Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy for landlord's use, as well as for an order that the landlord comply with the Act, an order limiting the landlord's access to the rental unit, and monetary compensation. The tenant and the landlord participated in the teleconference hearing.

Preliminary Issues

Withdrawal of Notice to End Tenancy

The landlord stated that he mistakenly issued the notice to end tenancy dated August 25, 2016, and he wanted to withdraw it. The tenant consented to the withdrawal of the notice, and I therefore did not deal with that portion of her application.

Partial Settlement Agreement

The landlord is trying to sell the rental unit, and the parties came to an agreement regarding showings of the unit, as follows:

- 1) the rental unit will only be available for showings on Tuesdays and Wednesdays between 4:00 p.m. and 9:00 p.m. and Saturdays and Sundays between 10:00 a.m. and 4:00 p.m.;
- 2) the landlord will notify the tenant in advance regarding appointments for showings, but will not be required to do so with written 24-hour notices; and

- 3) the tenant will claim no further kennel costs against the landlord after the date of this hearing.

As the matter of the showings was settled it was not necessary for me to consider the portion of the tenant's application regarding an order that limits the landlord's access to the rental unit. The only remaining issue for me to decide is the tenant's claim for monetary compensation.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on July 1, 2015, as a one year fixed term tenancy. At the end of the fixed term the tenancy reverted to month to month. The rental unit is the lower suite in a house. The upper portion of the house is occupied by other tenants.

Beginning in August 2016, the landlord started showing the rental unit and property for sale. The landlord first gave the tenant notice that showings would be held between 8:00 a.m. and 9:00 p.m. on a daily basis. On August 25, 2016 the landlord gave the tenant a written note indicating that all pets were to be removed from the premises during showings. The tenant stated that she tried to call the landlord to come up with a better solution, but her proposal was rejected and she got yelled at.

On September 20, 2016 the landlord served the tenant with 10 written notices for showings eight hours a day, every day. The tenant stated that landlord informed her they would notify her 24 hours in advance, but that did not always happen.

On October 4, 2016 the landlord gave the tenant another 11 notices, for showings every Tuesday, Wednesday, Saturday and Sunday. The tenant stated that these dates were based on an agreement between the landlord and the upstairs tenants, and did not take her schedule into consideration.

The tenant stated that she had to put her dog in a kennel and pay for cat-sitting when the unit was being shown, and she incurred \$200.00 for these services. The tenant also claimed \$1,003.00 for 43 days that the landlord requested entry to the unit. The tenant stated that having to relocate her pets and being disturbed by showings or potential showings deprived her of her quiet enjoyment for that period of time.

The landlord responded that there was a dog run built on the rental property, and the tenant could have put her dog there during showings. The landlord stated that he was not going to pay for the tenant's boyfriend to babysit her dog. The landlord stated that in her application for tenancy the tenant indicated that she was hardly ever home. The landlord stated that the tenant knew that they were not going to show the unit for 13 hours a day every day, and he would send her text messages for upcoming showings as soon as he knew about them.

The tenant responded that there is no shelter from the weather in the dog run, and she was not going to leave her dog in the heat or rain for eight hours. The tenant stated that the friend who took care of her dog was not her boyfriend, and her boyfriend is not allowed to have pets in his apartment.

Analysis

Upon consideration of the evidence, I find that the tenant is entitled to some monetary compensation. I agree with the tenant's submission that the landlord clearly instructed her, in writing, to remove her pets from the premises during showings. The landlord did not always give a clear indication of the specific showing times, and not far enough in advance that the tenant could easily make arrangements for her pets. I therefore grant the tenant \$200.00 for pet-sitting services.

In regard to loss of quiet enjoyment, I find as follows. Under section 28 of the Act, a landlord must provide the tenant quiet enjoyment of their rental unit, including but not limited to freedom from unreasonable disturbance. Under section 29 of the Act, a landlord's right to enter the rental unit is restricted. If a landlord gives written notice of an intention to enter the unit, they must specify "the date and time of the entry."

I note that the Act does not say a range of times or days, it requires that the specific date and time of entry be given. I do not find it reasonable for a landlord to give a blanket notice for possible days and times of entry.

I find in this case that the landlord did breach the tenant's quiet enjoyment of her unit. The landlord cannot rely on assumptions that the tenant does not spend much time in the unit or that the tenant knew that the showings were not going to happen every day for thirteen hours a day.

I do not find it reasonable, however, that the tenant be compensated the full amount of rent per day for each of the days of notice to enter. Quiet enjoyment is only one part of what rent pays for. The tenant was not deprived of any use of her rental unit for 24

hours on each of these days. The tenant stated that she did receive more specific notice of showings, though they were not always at least 24 hours before a showing. I therefore grant the tenant a nominal award of \$300.00 for her loss of quiet enjoyment during that time.

As the tenant's application was partially successful, I find she is entitled to recovery of her \$100.00 filing fee.

Conclusion

The notice to end tenancy dated August 25, 2016 has been withdrawn.

The landlord and the tenant have settled the issue of showings of the rental unit, as noted above.

I grant the tenant an order under section 67 for the balance due of \$600.00. This order may be filed in the Small Claims Court and enforced as an order of that Court. Alternatively, the tenant may deduct this amount from her next month's rent.

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: November 17, 2016

Residential Tenancy Branch