



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            LRE, OLC, MNDC, FF

### Introduction

This hearing was scheduled to deal with a tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; orders for the landlord to comply with the Act, regulations or tenancy agreement; and, orders suspending or setting conditions on the landlord's right to enter the rental unit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, I confirmed that the tenancy had come to an end after the tenants filed their Application. As such, I found the tenants' requests for orders for compliance and to set conditions on the landlord's right to enter the rental unit to be moot and these remedies were not considered further. Accordingly, the remainder of this decision deals with the tenant's monetary claims against the landlord.

It should be noted that I heard a considerable amount of testimony and I was provided several pages of documentation, all of which I have considered; however, with a view to brevity in writing this decision I have only summarized various submissions or described the most relevant matters.

### Issue(s) to be Decided

Have the tenants established an entitlement to compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement in the amount claimed?

### Background and Evidence

The tenancy commenced December 1, 2013 and the tenants were required to pay rent of \$1,100.00 on the first day of every month. The tenants occupied the main living unit on the property.

The landlord listed the residential property for sale in August 2016 and showings of the property to prospective purchasers and their agents commenced August 27, 2016. Initially, the tenants were notified of showings by way of text messages and the tenant would acknowledge the message via text message. In the latter part of September 2016 the tenants requested in multiple modes of communication that they be provided a schedule of showings and they provided a proposed schedule of their own. The tenants also requested that proper notice of entry be provided to them. Starting September 29, 2016 the landlord's Realtor started using written notices of entry. On September 30, 2016 the landlord provided a schedule of dates and times for showings; however, the tenants were of the view the schedule was not reasonable. Later on September 30, 2016 the tenants accepted an offer to rent another rental unit and they issued a notice to end their tenancy effective October 31, 2016. An unconditional sales agreement was reached in early October 2016 and the requests for access to the property ceased as of October 6, 2016. The tenants vacated the rental unit on October 31, 2016.

The tenants submitted that there were 24 requests for showings in the 31 days starting August 27, 2016 and more showings after that. The tenants recorded all of the notifications of showings or notices of entry by way of a calendar and the written notices of entry. The tenants pointed to some days where there were multiple showings in a single day. The tenants submitted that they found the frequent and multiple showings to be disruptive and very time consuming in preparing the house for show. On one occasion, on September 16, 2016, a buyer's Realtor entered the rental unit without knocking first. The tenants also submitted that the landlord had requested they not be present during showings, adding to their disruption.

The tenants seek compensation from the landlord for loss of quiet enjoyment equivalent to 100% of the rent paid for September 2016 and 50% of the rent paid for October 2016 rent in the sum of \$1,650.00.

The tenants also seek compensation, as amended, for \$700.00 in moving costs. The tenants submitted that they would not have considered moving before receiving a *2 Month Notice to End Tenancy for Landlord's Use of Property* but they were concerned they would not get a good reference when they overheard the landlord telling his daughter that the tenant were nitpicky. In accepting the rental unit offered to them they had to pack and move very quickly and they did not receive the benefit of having more time to move or compensation that comes along with a 2 Month Notice.

The landlord confirmed that the tenants' calendar and evidence as to dates for showings appeared accurate but noted that the evidence included times for property inspections. The landlord pointed out that, as seen in the calendar, there were several days where there were no showings and the tenants had breaks from showings.

The landlord's Realtor acknowledged that a buyer's Realtor did enter the rental unit without knocking first and after learning of that situation the landlord's Realtor took the key out of the lockbox and that she or her partner was present for all showings after that.

The landlord and his Realtor were of the view that sending text messages to the tenant to set up showing times appeared to be working well as it would permit the tenant to respond. However, after the tenants requested proper written notices of entry, notices were given.

The landlord's Realtor pointed out that the tenants had initially requested the Realtor provide them with a schedule for showings but she did not provide such as she was of the view that she did not have an agreement with the tenants, the landlord did. The Realtor stated that she passed along the tenants' request to the landlord.

The landlord submitted that the tenants sent a request for a showing schedule to him using an incorrect email address on September 23, 2016. The tenants sent another request, which he received, on September 27, 2016. The landlord was of the view that he provided the tenants with a schedule within a reasonable period of time, on September 30, 2016, considering he had to first consult the tide schedules. The landlord explained that the property showed the best during high tide so he created a schedule that would allow for the majority of showings during high tide. The landlord pointed out that sometimes buyers could not come during high tide so showings were done at other times as well.

The landlord acknowledged that the tenants kept the rental unit in great condition in preparation for the showings but the landlord was of the view that they took this upon themselves and that he did not ask them to do that much work. The landlord stated he did not require the tenants to be out of the house during showings but he did indicate to them that buyers would prefer that. The landlord pointed out that the male tenant was often at home during the showings, but the female tenant was often at work.

As far as the tenants' decision to move, the landlord stated that on September 28, 2016 the tenants told him that they had found a nice place to move to. Since the house had not sold at that point in time, the tenants' decision to accept that offer was entirely up to them.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Under section 28 of the Act, every tenant is entitled to quiet enjoyment of the rented premises. Quiet enjoyment includes reasonable privacy; freedom from unreasonable disturbance; and, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29.

Section 29 provides for the landlord's restricted right to enter the rental unit and the manner in which this is accomplished. The relevant portions of section 29 are reproduced below:

(1) 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;

[Reproduced as written with my emphasis underlined]

Residential Tenancy Branch Policy Guideline 6: *Entitlement to Quiet Enjoyment* provides policy statements with respect to finding a breach of a tenant's right to quiet enjoyment. The policy guideline provides, in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable

disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

Under section 1 of the Act, "landlord" is defined to include the owner of the property or a person authorized to act on behalf of the owner. The definition of landlord is relevant since it is the landlord that has right to enter the rental unit under section 29 of the Act. As such, gaining the tenant's permission to enter or giving the tenant notice to enter entitles the landlord or the landlord's authorized agent to enter, even if the tenant is not home. The landlord's entitlement to enter does not extend to prospective buyers and the buyer's Realtor without the landlord or the landlord's agent present.

The Residential Tenancy Branch provides information to landlords and tenants with respect to selling tenanted properties. As seen on the Branch's website, when a landlord or landlord's agent enters a rental unit the landlord has a duty to safeguard the tenant's possessions. Further, gaining a tenant's permission to enter or giving a notice of entry does not mean a prospective buyer and the buyer's agent is entitled to enter the rental unit in the absence of the landlord or landlord's agent. Accordingly, where a tenanted property is listed for sale, it is expected that a lockbox not be used unless the tenant has given permission for that; and, the landlord or landlord's agent will be present during showings.

In this case, there was a period of time whereby a lockbox was being used for prospective buyers and the buyers' agents to gain entry to the rental unit without the landlord or the landlord's agent present. Although the landlord's Realtor remedied this situation after September 16, 2016, when there was entry by a buyer's agent who did not knock first, I find there were entries that did not comply with section 29 of the Act up to this point which constitutes a breach of the tenants' right to quiet enjoyment.

Upon review of the calendar and notices of entry submitted into evidence, I accept that there were frequent and multiple showings of the rental unit. Showings of the property were especially active between August 27, 2016 and September 7, 2016, including multiple showings on certain days, and then there was a break in showings, followed by sporadic showings. It appears as though there was another cluster of showings taking place between September 22 through 24, 2016 followed by sporadic showings after that.

Upon consideration of the breach of section 29 up until and including September 16, 2016 and the quantity of showings in the month of September 2016 I am satisfied that the tenants suffered a breach of quiet enjoyment and a devaluation of their tenancy sufficient to warrant an award of compensation from the landlord for the month of September 2016. However, I find the tenants' request for compensation equivalent to 100% of their monthly rent to be excessive and

unjustified considering they still had use of the rental unit for most of the time for its intended use as living accommodation and some showings should be expected. While I find the tenants' actions of making the rental unit look good for showings is commendable, it was not required and their decision to do so is not compensatory. Further, the tenants recorded in their calendar that the landlord requested that they make themselves "scarce" for a showing on August 30, 2016 and the tenants said "no", leading to me to find that they were aware of their right to be present and chose to stay or go for the showings. All of these considered, I find a more reasonable award for loss of quiet enjoyment to be 25% of their monthly rent, or \$275.00, for the month of September 2016.

As for the month of October 2016, I find the few notices of entry in the first part of the month do not amount to an unreasonable number of entries and it appears as though entry was gained after receiving a notice of entry. Therefore, I find I am not satisfied that the landlord breached the tenants' right to quiet enjoyment in October 2016 and I made no award of compensation for the month of October 2016.

With respect to moving costs, I decline to grant the tenants' request for the landlord to pay for their moving costs. Tenancies end from time to time and pay for their costs to move. There may be certain circumstances when a tenant is awarded moving costs, such as where there has been an illegal eviction or constructive eviction by the landlord; however, the tenants gave notice to end tenancy in this case and I find the evidence insufficient to demonstrate the landlord constructively evicted them.

The tenants also raised the issue of compensation where a tenant receives a 2 Month Notice. Compensation equivalent to one month of rent is provided to tenants who have their tenancy ended by the landlord pursuant to a *2 Month Notice to End Tenancy for Landlord's Use of Property* and it is anticipated that tenants use this compensation to offset moving costs; however, the tenants did not receive a 2 Month Notice in this case. Rather, they gave notice to end tenancy before the house sale was unconditional.

In the circumstances before me, I find it reasonably likely that moving in the near future was foreseeable by the tenants considering the house was actively listed for sale and had several viewings and the tenants were occupying the main living unit in the house. The tenants were within their rights to wait for a 2 Month Notice to be served upon them; however, choosing to wait is accompanied by risk in losing the suitable rental unit was offered to them in September 2016. Therefore, I find the tenants made a decision in their own best interest to give notice and move when they did and for that decision they must bear the cost of moving.

As the tenants' claim had some merit, I award the tenants recovery of one-half of the filing fee they paid for this Application, or \$50.00.

In light of all of the above, I provide the tenants with a Monetary Order in the sum of \$325.00 to serve and enforce upon the landlord.

Conclusion

The tenants were partially successful in their claim and have been provided a Monetary Order in the amount of \$325.00 to serve and enforce upon the landlord.

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 09, 2016

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Residential Tenancy Branch