



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and an agent for the landlord.

In regard to the delay in the writing of this decision I note that Section 77 (1) (d) of the *Residential Tenancy Act (Act)* stipulates that a decision of the director must be given promptly and in any event within 30 days after the proceedings conclude. I also note that Section 77(2) states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1) (d). I apologize for the delay in this decision.

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to a monetary order for compensation for the loss of quiet enjoyment and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 29, 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy began on February 1, 2015 as a 1 year fixed term tenancy that converted to a month to month tenancy on February 1, 2016 for the monthly rent of \$1,470.00 due on the 1st of each month with a security deposit of \$600.00 paid.

The tenant seeks compensation from the landlord for the loss of quiet enjoyment and failure of the landlord to ensure proper notice was given to the tenant for the showing of the rental unit to prospective buyers during a 7 month period of the tenancy.

The tenant provided, in her Monetary Order Worksheet, the following breakdown of her claim:

Description	Amount
Entering rental unit without notice – 3 times	\$1,500.00
Showing the unit when the tenant was sick – 2 times	\$400.00
Cleaning the rental unit before showings	\$600.00
Loss of wages when the tenant got sick	\$680.00

Evening showings	\$700.00
Weekend showings	\$700.00
Not providing adequate notice of showings	\$200.00
Total	\$4,780.00

The tenant submitted the landlord's realtor entered the rental unit on two occasions without any notice and attempted a third. She submitted that on June 27, 2016 the realtor entered the unit without notice and had left her balcony door wide open and left all the lights on.

The tenant also noted that on October 11, 2016 the realtor had arranged a showing but no one showed up and no notification was received of a cancellation but then on October 13, 2016 the tenant states the landlord conducted a showing without confirming with the tenant.

On September 10, 2016, the tenant submitted, the realtor attempted to open the door but she had the "double lock" on. The tenant submitted that as a result she was afraid someone was attempting to break in.

The tenant submitted also that on several occasions the realtor conducted showings with less than 24 hours' notice. The tenant submitted that on some occasions they were sick and the realtor still conducted showings. One time, she states, that because of two showings she had to be out in the rain for 1 ½ hours and as a result she got sick and missed work.

In support of her claims the tenant has provided a substantial volume of copies of emails during the relevant period; a copy of a report from an emergency room physician dated November 17, 2016 in which the physician states the tenant cannot work from November 17 to November 19 due to illness or injury; and an undated letter from her employer stating that since she was notified that her rental unit was being sold her "mood and attitude began to diminish". This letter goes on to say she complained about not getting enough sleep due to showings; short notices of the showings and all the extra hours and showings after 3 or 4 months.

The landlord's agent submitted that they tried to respect the tenant's concerns as best they could and would reschedule when the tenant did not wish to allow a viewing. They acknowledged leaving the balcony door and lights on after one showing. The landlord submitted that they conducted 6 weekday evening showings and 7 weekend showings during the relevant period.

The parties acknowledged that discussions occurred regarding the potential for an open house but that one was never held.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

For the purposes of this decision I have address the claim as being in 4 categories:

1. Showings – relates to the tenant's claim for compensation for showings when she was sick; evening showings and weekend showings;
2. Notifications – includes the tenant's claim for the lack of any notifications or insufficient notifications of entries for the purposes of showing the property to potential buyers;
3. Cleaning – refers to the tenant's claim for cleaning the rental unit prior to showings;
4. Lost wages – includes the tenant's claim for lost wages due to illness.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and the use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6 states:

"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."

From the tenant's written submissions and copies of emails, it appears that the relator conducted 9 week day evening showings; 7 weekday showings; and 6 weekend showings. As noted above the landlord indicated 6 weekday evening showings and 7 weekend showings – but no indication of weekday showings.

From the tenant's submissions I find she is not claiming compensation for any weekday showings as such the total number of showings she is seeking compensation for is 15 showings or from the landlord's testimony 13 showings. I prefer the tenant's submissions on this number as she has provided specific dates and correspondence confirming at least this many showings.

As the tenant seeks a total of \$1,400.00 for weekend and weekday evening showings I note, based on the 15 showings, that she seeks \$93.33 per weekday evening or weekend showings over the course of the 7 month relevant period. I also note the tenant seeks an additional \$200.00 for showing the unit when she was sick on two occasions.

Based, primarily, on the email submissions of the tenant I find that on each of the times the realtor showed the property the tenant had agreed to the showing, with some noted exceptions. Further, I find that the emails also provide evidence that the tenant was able to refuse showings

and the realtor accepted these refusals and did not show on days the tenant did not agreed, unless it was a day that the tenant had not been informed of a showing.

I find there is nothing in the *Act*, regulation, or tenancy agreement that restricts the landlord's right to attempt to sell a rental unit they own. I accept that it is normal practice for realtors to conduct either individual showings or open house days or both when trying to sell a property. I also accept most purchasers like to see a property before they might put in an offer to purchase.

To facilitate this I find it is reasonable for the landlord to have a realtor conducting showings on their behalf while a property is listed. In addition, I find such activity will impact a tenant's quiet enjoyment of a rental property. Section 28 ensures a tenant is entitled to freedom from unreasonable disturbances.

I find that 15 showings for the purpose of selling the rental unit over a period of 7 months are neither frequent nor ongoing. As such, I find this amount of showings does not constitute an unreasonable disturbance. As a result, I find the tenant has failed to establishment of a violation of Section 28 for the 15 weekday evening and weekend showings over the 7 month relevant period of time. Therefore, I dismiss this portion of the tenant's claim.

Section 29(1) of the *Act* states 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;
- (c) The landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) The landlord has an order of the director authorizing the entry;
- (e) The tenant has abandoned the rental unit; or
- (f) An emergency exists and the entry is necessary to protect life or property.

In regard to notifications of entry, I find the bulk of the tenant's complaint results from the realtor providing less than 24 hour notice in writing for showings, indicating that on some occasions she was only given 40 minutes notice. I note that Section 29 of the *Act* allows a number of allowable circumstances that do not require 24 hours' notice.

Section 29 (1) (a) allows the landlord entry if the tenant gives permission at the time of the entry or not more than 30 days before the entry. In the majority of the emails submitted by the tenant for the dates that showings occurred I find the tenant agreed to the showing, with the exception of the three times the tenant submitted that she did not receive any notice on. I deal with those times next this decision.

As the tenant has agreed to these showings, I find the tenant has failed to establish the landlord, through his realtor, has violated Section 29 of the *Act* by failing to provide adequate notice of entry in regard to the tenant's claim for \$200.00. In this case, the realtor did not have

to provide 24 hours' notice because of the tenant's agreement to the showing. Therefore, I dismiss this portion of the tenant's claim.

As to the tenant's claim for \$1,500.00 for three occasions when the landlord's realtor failed to give any notice at all, I favour the tenant's submissions that these events occurred. The landlord has provided no evidence of any notifications of entry during the relevant period. However, I find her claim for \$500.00 for each of these infractions is extreme.

I make this finding in part because, I find that tenant had already been informed that the rental property was being put on the market for sale; that two of these occasions the tenant was not interrupted from using the property while she was away from it at the time of entry; and she has provided no indication of how she determined this amount.

Despite these findings, I find the importance of notification of entry by the landlord or his agent into a rental unit is a significant violation of the rights of the tenant during any tenancy. I also find such action instills a measure of mistrust in the relationship between a tenant and their landlord thus reducing the value of the tenancy. While the tenant has not established a value of this loss to my satisfaction, I can grant a nominal award of \$50.00 to the tenant, pursuant to Residential Tenancy Policy Guideline 16.

Section 32(2) states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and Section 32(3) states the tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

As Section 32 (2) of the *Act* requires a tenant to maintain the rental unit to reasonable cleanliness standards; the tenant has provided no evidence that either the landlord or the realtor asked the tenant to clean the rental unit for any of the showings; and my findings above that the landlord has not breached Section 28 for the few showings conducted, I find the tenant has failed to establish any breach of the *Act*, regulation, or tenancy agreement that would warrant the landlord compensating the tenant for cleaning the rental unit. Therefore, I dismiss this portion of the tenant's claim.

Finally, in regard to the tenant's claim for lost wages because she got sick after having to stay outside in the rain for 1 ½ hours for two showings on one occasion, I find the tenant has failed to establish that her reasons for missing work were related to any violation of the *Act*, regulation or tenancy agreement.

While the realtor may have requested the tenant stay away for 1 ½ hours during this time, I find, based on the address of the rental unit, that there would have been, on a balance of probabilities, any number of places where the tenant could have gone to stay out of the rain, such as a mall, a coffee shop or restaurant; a community centre or library or even by staying in the lobby of the residential property.

Furthermore, I find the medical note submitted by the tenant does not even indicate a reason or diagnosis that prevented her from working. The physician's document states that she cannot attend work because of an illness or injury; as such, I find it is not clear what illness or injury caused her to miss work.

For these reasons, I dismiss the tenant's claim for loss of wages.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$50.00** for the realtor's failure to provide sufficient notification of entry into the rental unit on 3 occasions. As the tenant was largely unsuccessful in her claim I dismiss the portion of her claim seeking to recover the filing fee.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: August 25, 2017

Residential Tenancy Branch