



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LAT LRE MNDC OLC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for compensation for loss or money owed under the Act pursuant to section 67; an order requiring the landlord to comply with the Act agreement pursuant to section 62; authorization to change the locks on the rental unit; an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

As the tenant vacated the rental unit prior to this hearing, the tenant withdrew her application that the landlord comply with the Act, that she receive authorization to change the locks, and for authorization that she set conditions on the landlord's right to enter the rental unit. She proceeded with her application for a monetary order and to recover the filing fee for her application.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for loss or money owed?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*?

Is the tenant entitled to change the locks to the rental unit and/or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on December 1, 2016 as a 6 month fixed term with a rental amount of \$2300.00 payable on the first of each month. At the outset of the tenancy, the landlord accepted a security deposit and pet damage deposit in the amount of \$1150.00 for each deposit. After discussions with the landlord about their sale of the property, the tenant vacated the rental unit on June 26, 2017.

The landlord has returned the tenant's \$2300.00 in pet damage and security deposits. The tenant seeks a further \$2300.00 – the equivalent of one month's rent – as compensation for the loss of quiet enjoyment of her rental unit during the course of her tenancy.

The tenant testified that the landlord advised her that he intended to sell the rental unit that she was renting on May 21, 2017. She testified that the landlord made an unreasonable number of requests for access to the unit. She provided undisputed testimony that, on more than one occasion, the landlord left the unit unlocked after showing it to potential buyers. She testified that one evening, she agreed to stay overnight somewhere else so that the landlord could show the rental unit over an extended period of time.

The tenant described in detail, both in her written and oral submissions, the multitude of requests for entrance and entrances by the landlord into the rental unit. She stated, as she did in her testimony that the landlord often gave insufficient notice for entry into the unit. She referred to the security issues that became concerns as the landlord or his agent would leave the tenant's door unlocked when leaving the rental unit on more than one occasion. She further stated that she attempted to mitigate her damage by looking for new housing. She stated that she incurred costs as a result of her notice to end tenancy including but not limited to her moving costs.

The tenant testified that the landlord and tenant agreed to a mutually acceptable move-out date. According to the tenant, the landlord agreed that 30 days' notice would be acceptable to end the tenancy, that the landlord agreed to waive the requirement to clean the rental unit, and that the landlord paid for one night in a hotel for the tenant on the night he wished to access the rental unit for showings.

The landlord argued that the above concessions were the tenant's compensation at the end of this tenancy for consideration of any inconvenience she faced as the landlord was trying to sell the rental unit. The tenant argues that she is entitled to more compensation for the inconvenience caused by the landlord's showings and unauthorized entrance to the rental unit as well as failure to provide proper notice to end the tenancy or proper notice to enter the rental unit on a number of occasions.

The landlord testified that he told the tenant she did not have to worry: that she would not have to move out right away even though he was selling the rental unit. He acknowledged his provision of a 10 days' notice to end the tenancy to the tenant. The landlord testified that, every time he entered the tenant's rental unit, it was with her permission. He testified that he believed he had entered the unit approximately 12 times with less than 24 hours' notice and that all other entries that month, he had provided a minimum of 24 hours' notice.

The landlord submitted that all compensation or concessions (including not being required to clean the rental unit) were negotiated and agreed upon by the landlord and tenant and therefore, that agreement should not be interfered with. The landlord's representative testified that the tenant was aware of the conditions of a 2 Month Notice to End Tenancy as well as the applicable compensation in those conditions. However, the landlord's representative testified that the tenant chose to leave without sufficient notice to the landlord.

Analysis

I accept the tenant's testimony that the landlord entered her rental unit on several occasions. I find that the evidence of the landlord does not dispute the tenant's claim. The landlord testified that the tenant agreed to let him into the unit and that he had a reasonable excuse (attempts to show and sell the property) to enter the unit. However, as stated within Residential Tenancy Guideline No. 7, "a 'reasonable purpose' may lose its reasonableness if carried out too often." The tenant argues that the landlord's entrances and requests to enter were too frequent, that she was both inconvenienced and her residential premises was regularly intruded upon without sufficient consideration for her (privacy).

The landlord argues that the tenant's claims that an agreement was made between the parties and therefore the tenant is not entitled to further compensation. I find, in accordance with the Act, that the tenant is not limited in the compensation she seeks merely because the landlord provided some previous compensation.

Based on all of the evidence at this hearing, I find that the landlord entered the tenant's suite on at least 12 occasions without sufficient notice. I accept the testimony of the tenant that, given the landlord's intent to sell the unit, she felt that she had little choice but to allow the landlord into the unit when he attended or sent a message but that she was not comfortable with this arrangement.

The tenant agreed that she received some compensation but that she felt further compensation was appropriate in the circumstances. I agree with the tenant that she is entitled to further compensation. While the tenant was compensated for her willingness to leave her residence for the night to allow the landlord to show the rental unit, that compensation was appropriate for the circumstance of that evening only and the agreement for the benefit of the landlord. While the tenant was compensated with a waiver from the responsibility of cleaning the unit and providing 30 days' notice to end tenancy, this was also to accommodate the landlord: to expedite the tenant's vacating the rental unit.

I find, in accordance with section 29 of the Act, that the variety of occasions described when the landlord entered the unit, he was obligated to and should have sought the tenant's permission or at minimum provide sufficient notice before entering the unit. The tenant's behaviour at the end of the tenancy – refusing entry in the unit and formally requesting a reprieve from the showings until she vacates the rental unit – illustrative of the inconvenience and intrusion that was caused by the landlord's repeated requests to enter the unit.

I refer to (and reproduce for the benefit of the parties) section 29 of the Act regarding a landlord's access to a rental unit. As previously stated in this decision, this information is also supplied within the residential tenancy agreement.

29 (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;
 - (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;
 - (f) an emergency exists and the entry is necessary to protect life or property.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b). **[emphasis added]**

Given that the landlord violated this section of the Act on a variety of occasions and, despite the tenant's hesitation, did so on an ongoing basis strictly for his own purposes (the sale of the rental unit), I find that the tenant is entitled to be compensated for these repeated violations and, more generally, to the impact on the quiet enjoyment of her rental unit.

Quiet Enjoyment

Protection of tenant's right to quiet enjoyment

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

While I find that the tenant is correct that the landlord went beyond his authority and his obligation to the tenant by entering the unit, leaving the door unlocked or ajar and other inconveniences, I acknowledge that in this case, the landlord ceased to request access when the tenant formally requested that he stop doing so.

Given all the circumstances, that the landlord intended to sell, that he regularly went into the unit without sufficient notice to the tenant and that the landlord attempted to accommodate the tenant with a variety of forms of compensation, I find that the tenant is entitled to a general damages award that reflects the invasion on her privacy, the general loss of quiet enjoyment and the entry into her unit without the landlord meeting his obligations to notify in sufficient time, that the tenant is entitled to \$1150.00: the equivalent of ½ months' rent. As the tenant was successful in her application, she is also entitled to \$100.00 to recover the filing fee for this application from the landlord.

Conclusion

I issue a monetary order to the tenant in the amount of \$1250.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: September 12, 2017

Residential Tenancy Branch