Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 460 PROPERTY MANAGEMENT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes LRE, MNDCT, OLC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the "*Act*") to suspend or restrict the Landlord's right to enter, for monetary compensation, for an Order for the Landlord to comply with the *Act, Residential Tenancy Regulation* (the "*Regulation*") and/or tenancy agreement, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

One of the Tenants was present for the teleconference hearing, as were two agents for the Landlord (the "Landlord"). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants' evidence. The Tenant confirmed receipt of a copy of the Landlord's evidence package. Although the Tenant claimed that the evidence was received late on March 14, 2019, it was clarified that this was within the timeline provided under the *Residential Tenancy Branch Rules of Procedure*. The Landlord stated that the notice of hearing documents were received late but confirmed that they had a chance to review the documents and submit evidence in response. No further issues were raised regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Preliminary Matters

The agents for the Landlord clarified the business name of the Landlord, which was slightly different that what was stated on the Application for Dispute Resolution. The application was amended to the company name of the Landlord.

At the outset of the hearing the parties confirmed that the tenancy ended on February 28, 2019. As such, the Tenant confirmed that their claims to restrict the Landlord's right to enter and for an Order for the Landlord to comply with the *Act, Regulation* and/or tenancy agreement were no longer relevant. Therefore, these claims were removed from the Tenant's application and the hearing proceeded on the basis of the monetary claims of the Tenants.

These amendments to the Application for Dispute Resolution were made pursuant to Section 64(3)(c) of the *Act.*

Issues to be Decided

Are the Tenants entitled to compensation?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on December 15, 2015 and ended on February 28, 2019. Monthly rent was $1,300.00 and the Tenants paid a security deposit of $650.00 that has since been returned.

The Tenants have claimed compensation in the amount of $2,100.00, which is the equivalent to $300.00 per month for a period of 7 months between August 2018 and February 2019 when the rental unit was for sale. The Tenant testified that they were advised that their Landlord was selling the rental unit. When the photographer came to take photos of the home, the Tenant stated that some of their personal belongings were moved and not returned to where they were originally.

The Tenant stated that the realtor had arranged showings of the home 4 days per week for hours at a time, as well as open houses on the weekends. The Tenant stated that while realtors were showing the home to their clients, they would often leave lights on. The Tenant submitted that the viewings were disruptive and therefore she asked for less, although this did not occur and there were sometimes 3 showings per day.

The Tenant stated that keeping the home cleaned and prepared for showings required a lot of work. She also noted that the realtor would often contact them by text late in the

evening to inform them about showings the next day. The Tenant submitted multiple emails and text message exchanges with the property manager and the realtor into evidence.

The Tenant stated that at the beginning of each month she was given a schedule of when the showings would be and that for the first two months the realtor or agent would not notify her about whether showings were occurring. The Tenant stated that she tried to be present for the showings after what happened with the photographer, but this was difficult when proper notice was not given. The Tenant also noted one time when a realtor showed up at the home prior to when expected. The Tenant stated that the Landlord's realtor began to notify her regarding the next day showings after she expressed the challenges with not knowing if the showings would be happening.

The Tenant submitted some of the monthly letters into evidence regarding showing dates. A letter dated September 9, 2018 outlined 15 showings of the home between September 12 and October 6, 2018 for a total of over 70 hours of showings. The letter states in part the following:

> *Please accept this as formal 24 hour written notice, given not more than 30 days in advance, of our intention to have access as the owner's representative for the purpose of showing the property to potential purchasers.*

The Landlord stated that they arranged for showings to be 3 days per week with showings on Saturdays for emergencies only. They stated that they provided not more than 30 days notice by providing written notice of the possible showings for the next month. They submitted into evidence an example of the monthly written notice they would provide.

The letter, dated January 2, 2019, outlines showings between January 4, 2019 and February 2, 2019 for a total of approximately 65 hours. The Landlord stated that they would post the monthly letter on the Tenants' door or provide to the Tenant in person. They stated that they would then confirm the next day showings with the Tenants by email or text message.

The Landlord also provided a summary of the total showings which notes that there were 17 showing between August 24, 2018 and February 6, 2019. The summary also notes that there was one two-hour open house and one three-hour home inspection.

The Landlord stated that the monthly schedule was arranged with the Tenants and they respected the Tenants' requests, such as telling every realtor to turn off the lights and turning down showings that did not fit with the schedule. The Landlord stated they were not sure why one realtor showed up early to a showing, but they apologized for this. The Landlord noted that there were no more showings after February 6, 2019 as the home was purchased and one inspection was scheduled following this date.

The Landlord stated that they did not book any showings outside of the arranged time and that these times did not mean that people would be in the home at that time. The Landlord submitted that at first they did not cancel the showings if nothing was booked, but after the Tenant bringing this to their attention, they began notifying the Tenant the day before regarding the next day showings. They stated that this was resolved within the first week of the home being listed for sale.

Analysis

The Tenants have claimed loss of quiet enjoyment of the rental unit between August 2018 and February 2019 during which time the rental unit was for sale with regular showings occurring. The Tenants have also claimed that improper notice to enter the rental unit was provided which added to the loss of quiet enjoyment.

I refer to Section 28 of the *Act* regarding 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.

I find Section 28(c) as noted above particularly relevant in this matter and therefore refer to Section 29(1) of the *Act* regarding a landlord's right to enter:

> 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.

The parties were in agreement that a monthly schedule of showings was provided to the Tenants at the start of each month and then confirmed the day before the showing by email or text.

While the Landlord served the monthly schedule in person or by posting on the Tenants' door and stated that they did so at least 24 hours prior to required access, I do not find these monthly letters to be issued in accordance with Section 29(1)(b)(i), such that the purpose for entering must be reasonable.

Upon review of the notices and communication between the parties, I do not find that the monthly notice of showings was reasonable as they were seemingly scheduled prior to any showings actually being booked and provided upwards of 60 hours per month in which the rental unit would be accessed. While it would be reasonable for the parties to discuss the days and times in which showings could be booked, I find this to be separate from notice regarding actual entry to the rental unit in accordance with Section 29.

Based on the monthly notice provided, the Tenants were to expect that the rental unit may be accessed up to 6 hours in one day, despite the fact that this may or may not occur.

The notice provided to the Tenants the day before any booked showings was provided to the Tenants by text or email which is not a method of service under Sections 88 or 89 of the *Act,* although the parties could have agreed that this was the most effective way of communicating.

However, in order to comply with Section 29 of the *Act,* I find that the agent or realtor would need to notify the Tenants at least 24 hours in advance of any booked showings when the rental unit would actually be accessed. By providing blanket notice for entry each month, I do find that the Tenants' right to quiet enjoyment was disrupted with not knowing whether there would be any showings that week or potentially up to 6 hours per day where their rental unit would be accessed.

With little notice as to whether there would actually be a showing the next day, I find that the Tenants likely took steps to keep the home clean and made plans around a potential showing, despite not being sure if it would occur. Despite the Landlord's evidence that shows that the home was entered 19 times in a seven-month period, the monthly letters indicate that the Landlord would be entering multiple times per week for many hours at a time, which I do not find to be reasonable.

As stated in Section 7 of the *Act,* if a party does not comply with the *Act* they must compensate the other party for any losses that occur as a result. Section 7 of the *Act* also notes that a party claiming a loss must do what is reasonable to minimize their losses. I find evidence before me that the Tenants notified the Landlord regarding their concerns with the showing schedule and took reasonable steps to try to make the showing schedule more reasonable.

Based on the testimony and evidence of both parties, I find that the Landlord did not comply with Section 29(1) of the *Act* as monthly notice of potential showings did not provide a reasonable purpose for entering the rental unit. Therefore, I also find that the Tenants lost some quiet enjoyment of the rental unit due to excessive notice of access by the Landlord.

I accept the amount claimed by the Tenants at $300.00 per month for a total of $2,100.00 over a 7-month period and award the Tenants this amount.

As the Tenants were successful with their application, pursuant to Section 72 of the *Act,* I also award the recovery of the filing fee in the amount of $100.00, for a total monetary award of $2,200.00.

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **$2,200.00** as outlined above. The Tenants are 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: April 3, 2019

Residential Tenancy Branch