



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT LRE MNDCT OLC

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- authorization to recover the filing fee for this application pursuant to section 72;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and,
- an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The respondent acknowledged receipt of the applicant's Notice of Hearing and Application for Dispute Resolution. I find the landlords were served with the notice of hearing in accordance with the *Act*.

### *Preliminary Matter: Admissibility of Landlord's Evidence*

The tenants testified that they submitted their evidence in two batches and they sent their first batch of evidence to the landlords by registered mail with the notice of hearing. The landlords testified that the registered mail envelope only contained the notice of hearing and it did not include the tenants' evidence.

*Residential Tenancy Branch Rules of Procedure*, sections 3.14 states that the applicant's evidence must be received by the applicant and the RTB fourteen days

before the hearing. Based upon the conflicting testimony from the parties, I was unable to determine whether or not the evidence was served on the tenant. However, *Residential Tenancy Branch Rules of Procedure*, section 3.5 states that the applicant must be prepared to provide proof of service of their evidence. I am not satisfied that the tenants have provided sufficient proof that they have served their initial batch of evidence in accordance with the *Residential Tenancy Branch Rules of Procedure*.

I find that the admission of this evidence without adequate proof of service upon the landlords would prejudice the tenant and result in a breach of the principles of natural justice. Accordingly, landlords' initial batch of evidence is excluded pursuant to *Residential Tenancy Branch Rules of Procedure*, section 3.12 and it is not relied upon in making this decision.

I asked the tenants if they wanted to adjourn this matter to perform service of their evidence upon the landlords but the tenants chose to proceed with the hearing without the excluded evidence.

#### Preliminary Matter: Tenants Vacated the Property

The parties agreed that the tenants had vacated the rental unit prior to the hearing. As a result, I find that the tenants' application for an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70 and the tenants' application for an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62 are no longer in issue.

Section 62(4)(b) of the *Act* states that an arbitrator may dismiss all or part of an application for dispute resolution which does not disclose a dispute that may be determined under the *Act*. I exercise my authority under section 62(4)(b) of the *Act* to dismiss the tenants' application for an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70 and the tenants' application for an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

#### Issue(s) to be Decided

Are the tenants entitled to an order for authorization to recover the filing fee for this application pursuant to section 72?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

### Background and Evidence

The tenants testified that the landlords had been attempting to sell the property since January 2019. The tenants testified that landlords scheduled numerous walkthroughs through the rental unit which were co-ordinated by the landlords' real estate agent,

The tenants testified that they made a schedule of availability which the landlords agreed to. However, the tenants testified that the landlords did not follow this schedule. The landlords testified that they never agreed to tenants' schedule. The landlords testified that the tenants agreed to all showings prior to July 2019.

The landlords created their own schedule for showings starting in July 2019. The landlords testified that they provided a list of showing times for the whole month and then their realtor would provide a 'courtesy text' if the appointments were actually booked. The landlords testified that the scheduled showings on the monthly notice were just potential appointments which the landlords' real estate agent could use to book showings. The landlords acknowledged that the real estate agent's courtesy texts confirming appointments were not always sent 24 hours before the rental unit was entered.

Notice taped to door for July 2019 showings on July 5, 2019. The July notice referenced the following visits:2019

- July 9 from 5 pm to 7 pm;
- July 11 from 5 pm to 7 pm;
- July 13 from 2 pm to 4 pm;
- July 18 from 5 pm to 7 pm;
- July 20 from 2 pm to 4 pm;
- July 21 from 2 pm to 4 pm;
- July 23 from 5 pm to 7 pm;
- July 25 from 5 pm to 7 pm; and,
- July 27 from 2 pm to 4 pm.

Notice taped to door for August 2019 showings on August 15, 2019. The August notice referenced the following visits:

- August 19 from 4 pm to 6 pm;
- August 21 from 2 pm to 4 pm;
- August 22 from 1 pm to 5 pm;
- August 24 from 11 am to 1 pm;
- August 26 from 4 pm to 6 pm;
- August 28 from 4 pm to 6 pm;
- August 30 from 11 am to 1 pm; and,
- September 1 from 11 am to 1 pm.

Notice taped to door for September 2019 showings on September 2, 2019. The September notice referenced the following visits:

- September 6 from 12 pm to 2 pm;
- September 7 from 12 pm to 2 pm;
- September 8 from 12 pm to 2 pm;
- September 10 from 2 pm to 4 pm;
- September 12 from 3 pm to 5 pm;
- September 14 from 12 pm to 2 pm;
- September 17 from 2 pm to 4 pm;
- September 19 from 3 pm to 5 pm;
- September 21 from 12 pm to 2 pm;
- September 24 from 2 pm to 4 pm;
- September 26 from 3 pm to 5 pm; and,
- September 28 from 12 pm to 2 pm.

The tenants testified that the repeated showings were very disruptive and disturbing. As a result, the tenants testified that they provided notice on September 15, 2019 that they were ending the tenancy. The landlords disagreed with the validity of the tenants' notice to end tenancy. The tenants testified that they vacated the rental unit on October 15, 2019. Both parties testified that the tenants paid rent until the end of September 2019.

The tenants claimed compensation for the landlords repeated entry into the rental unit, compensation for moving costs and compensation in lieu of notice from the landlords.

### Analysis

Section 29(b) of the Act states that a landlord must not enter a rental unit without providing:

- (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;

In this matter, I find that the tenants have failed to provide sufficient evidence to establish that the landlords entered the rental unit in contravention of the Act prior to July 2019.

However, commencing on July 5, 2019, the landlords began using a monthly notice that provided numerous potential dates of entry and these potential appointments would later be confirmed by text messages sent at times less than 24 hours before the potential appointment. I find that the notices provided on July 5, 2019; August 15, 2019 and September 2, 2019 were not sufficient written notices within the meaning of section 29 of the Act. These notices do not provide specific dates and times of entry. Rather, they merely notify the tenants of potential appointments. The landlords acknowledged that confirmation of an actual entry was sent later by the real estate agent and this actual notice was not always sent more than 24 hours before the entry by the landlords' agent.

Accordingly, I find that the landlords did not provide written notice at least 24 hours prior to entry as required by section 29 of the Act and I find that the landlords have violated the Act.

I find that the tenants have been harmed by the landlord violation of the Act. I find the tenants' testimony that the frequent showings with inadequate notice disturbed them to be credible. Based on the frequency of the appointments, of which there was 29 potential appointments scheduled from July to September, I find that a reasonable amount of compensation for the tenants' disturbance is \$150.00 per month from July 2019 to September 2019, totaling \$450.00.

I find that the tenants have vacated the rental unit voluntarily. As such, I find that the tenants have failed to provide sufficient evidence to establish that the existence of a legal obligation entitling them to compensation for moving out of the rental unit. Accordingly, I dismiss the tenants' application for compensation for moving expenses and damages in lieu of notice.

Since the tenants have prevailed in part of their claim, I grant the tenants reimbursement of one-half of the filing fee, being \$50.00, pursuant to section 72.

Accordingly, I grant the tenants a monetary order in the amount of \$500.00, calculated as follows:

<u>Item</u>	<u>Amount</u>
Compensation for not providing proper notice of entry	\$450.00
Partial reimbursement of filing fee	\$50.00
Total	\$500.00

### Conclusion

I grant the tenants a monetary order in the amount of **\$500.00**. If the landlords fail to comply with this order, the tenants may file the order in the Provincial Court to 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: December 10, 2019

---

Residential Tenancy Branch