Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Duttons and Co. Real Estate Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

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

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's witness was the real estate agent (the realtor) retained by the owner of this property. Although they were agents for the owner of the property, they were not agents of the company that is managing the rental property for the owner of the property. As such, the realtor was sworn in as the landlord's witness for this hearing and not as a direct representative or agent for the party named by the tenants as the Respondent in this application.

As the landlord's representative (the landlord) confirmed that they had received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on January 22, 2021, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

During the hearing, the landlord and the realtor gave undisputed sworn testimony that this property has sold and that as of May 3, 2021, a new investor(s) will be taking over

as the owner of this property. The parties also agreed that on March 26, 2021, the tenants gave their notice to end this tenancy on April 30, 2021, the last date of their one-year fixed term tenancy. Since this tenancy is ending shortly and the situation that gave rise to the tenants' application requiring the landlord to comply with the *Act* and the tenancy agreement has now been concluded, there is no need to consider the tenants' application requiring the landlord to comply with the *Act* and the tenancy agreement.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses in the value of their tenancy that they have experienced? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claim and my findings are set out below.

On April 10, 2020, the parties signed a one-year fixed term Residential Tenancy Agreement (the Agreement) that was to enable the tenants to live in the upper level of this two level rental home from May 1, 2020 until April 30, 2021. Monthly rent is set at $1,895.00, payable in advance on the first of each month, plus $155.00 in utilities. The landlord continues to hold the $957.50 security deposit paid when this tenancy began.

The tenants applied for a monetary award of $4,000.00 for their loss of quiet enjoyment over a four-month period when this rental property was listed for sale by the owner of this property and viewings by prospective purchasers and their real estate agents were occurring. The tenants maintained that the landlord company managing the rental of this property did not take adequate measures to ensure that their concerns about the health and safety precautions taken during the global pandemic for the viewing of their premises were addressed. Although they had interactions with the owner's real estate agent, they found many of these interactions still led to inadequate health and safety precautions being taken by the realtor and by other realtors and their clients who viewed the rental unit during the four month process to sell this property. They claimed that a lockbox was installed to enable other realtors to access their property and that on occasion realtors and their clients entered their rental premises without advising the tenants of their intent to do so. Since Tenant MM works as a nurse in a hospital and has heightened awareness of the potential spread of COVID-19 to their patients, the

tenants believed that neither the real estate agent nor the landlord company managing this property were sufficiently conscientious about the legitimate concerns that they raised about this real estate viewing process.

In their written submissions, the tenants maintained that repeated letters that they sent the landlord company about their concerns went unanswered. They claimed that the real estate agent's behaviours did little to convince them that their health and safety concerns were being incorporated in the viewing process. They provided undisputed written evidence that over 100 people attended the rental home during the four month period. On one occasion, Tenant MM noticed that those planning to view their rental premises were lined up on the lawn of the property. During this two hour viewing session, Tenant MM said that 24 people entered the property. As the tenants felt compelled to be on site to ensure that those viewing the rental unit were not left unattended by their realtors and the landlord's realtor, they had to make arrangements each time a viewing was to occur to be present. They also maintained that they also had to undertake a full and complete cleaning and sanitizing of the rental unit after every viewing/showing. They claimed that on average there were two showings per week during the four month period, and that on a number of these occasions more than one realtor and their clients entered the rental unit.

The tenants also raised concerns about the professionalism exhibited by some of the realtors who gained access to their rental property without ensuring that those accompanying them were attentive to COVID-19 protocols and were not touching or handling features of the house that could spread the coronavirus. They also maintained that the realtor's son, who is not a licensed realtor was conducting some of the showings. They also questioned a situation when another realtor was provided with a key to the rental unit, entered the premises with clients, and left the rental property without providing any notification of a proposed viewing that day. The tenants considered this a case of break and enter as they had not authorized that realtor to access their rental premises.

In their written submissions, the tenants maintained that the owner of the property and the realtor had prolonged this period of real estate viewings by refusing to reduce what the tenants maintained was an overly inflated asking price for the rental property. They also maintained that the realtor was tardy in redirecting prospective investors to an online video of the inside of their rental unit and was remiss in providing an accurate description of the rental unit to prospective purchasers. The tenants asserted that some of the people walking through their home were not aware of the size or composition of the rental unit.

The landlord only started managing this rental property on January 5, 2021. They said that from the record kept by their predecessor and the emails supplied by the landlord's real estate agent, it appeared that the real estate agent did take into account the tenants' concerns and performed their services in accordance with advice provided by the RTB and the body governing realtors. They said that the real estate agent first contacted the tenants in late August 2020, to make mutually acceptable arrangements to show the rental home to prospective purchasers. The landlord testified that during the month of September 2020, the realtor made fifteen requests for viewings to the tenants. The landlord said that the tenants only indicated that four of these showings were suitable for their schedules. The landlord said that six showings occurred during November with five more happening in December. They said that there were never any problems with respect to the showing of the rental unit in the lower level of this rental property. The landlord said that after a showing on December 21, 2020, all showings of the property ceased, as the tenants were becoming too aggressive and negative to prospective purchasers.

The realtor said that the December 21 showing was the largest and that seven separate groups of prospective purchasers, their attending realtors and the realtor, the realtor or the realtor's assistant had to enter the rental unit that day. The tenants were also in attendance that day.

The realtor said that they are a parent of three children themselves and have taken every required step to ensure that real estate viewings occur in accordance with the advice coming from the RTB and the Real Estate Council. They testified that as soon as they were retained by the owner, they contacted the tenants to ask them to provide a showing schedule that would be suitable to the tenants. Although the tenants responded to the realtor's August 29, 2020 email a few days later, the realtor maintained that the tenants did not provide the requested showing schedule, instead focussing on the request for photographing the interior of the rental unit. The landlord referenced additional emails the realtor sent the tenants on September 7 and 11, in which the tenants failed to provide a showing schedule so that the realtor could organize showings at times that did not require ongoing exchanges of emails. The realtor said that this process was facilitated by the tenants' eventual provision of two hour blocks for showings, the tenants' expressed preference. The realtor claimed that the tenants did not select these two hour blocks for showings until late September 2020.

Although the realtor confirmed that a lockbox was placed on the outside of the rental property, they maintained that this was a lockbox designed to enable access to either the realtor or their brother, their partner realtor in their business. The realtor said that as

soon as they learned that the tenants did not want a lockbox on their property, the realtor removed it a few days after it was first installed. Tenant CG (the tenants) first testified that the lockbox was in place for a week; he subsequently changed this testimony to claiming it was in place for four days.

The realtor confirmed that at one point, likely about September 23, 2020, they posted a notice on the door of the rental unit for a series of scheduled viewings that extended beyond 30 days. The tenant noted that this original schedule proposed a showing almost every other day. When the tenants objected to this and the realtor learned that they could not schedule viewings more than 30 days in advance, the realtor returned to the property and removed this schedule. They said that they apologized at that time and made a revised schedule, apparently with some assistance from the tenants in arriving at suitable viewing times.

Analysis

I should first note that complaints about the professionalism of the realtor, their associate, or any other realtors lie beyond the jurisdiction provided to me by the *Act*. My powers are limited to those provided by the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove on the balance of probabilities that the landlord contravened the *Act* or the Agreement.

In the tenant's sworn testimony and in the written evidence they supplied to support their application, the tenants maintained that the landlord had contravened sections 28 and 29 of the *Act*. These sections read in part as follows:

> ***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.

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;…

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

In considering this matter, I first must note that the tenants failed to provide any evidence that any special measures instituted by the Province of B.C. during the global pandemic prevented the owner of this property from listing their property for sale in late August 2020. Nor have the tenants led any evidence that special or emergency measures instituted by the Province prevented a listing or real estate showing of the property for sale in late August 2020. The tenants have not identified anything in the *Act* or the Agreement that prevented the owner or their realtor from listing this rental property for sale and attracting prospective purchasers through making suitable arrangements for viewings of the two portions of this rental dwelling.

In order to accept the tenants' request for a monetary award, I would need to find that there were elements in their involvement with the landlord and, by extension, the owner's real estate agent, that contravened the *Act* or reduced the value of their tenancy. Many tenants have no doubt been justifiably nervous about allowing outsiders

within their living space during the global pandemic. I find that in order to be successful the tenants would need to establish on a balance of probabilities that their interactions with the landlord and the owner's realtor had led to a lessening in the value of their tenancy as a result of their loss of quiet enjoyment of the premises the landlord committed to rent to them until at least April 30, 2021.

I do find that the tenants have supplied sufficient evidence that a four-month process of ongoing showings that involved over a hundred people, where as many as 24 people could enter their residence over a two hour time period, is indeed exceptional and out of the ordinary. I can appreciate that realtors, companies managing properties for landlords, landlords and tenants all have unique circumstances at play during the current global pandemic when owners are seeking to sell their rental properties. Although entering into a one-year fixed term Agreement did not prevent the landlord from selling this rental property for whatever price they could command on the open market, the tenants also expected to be left in relative quiet enjoyment and free of unreasonable disturbance of their premises by signing a one-year fixed term. I find that the constant and extended barrage of showings that required the tenants to take measures such as having one of them available during these showings and taking measures to clean and sanitize the premises following each of these showings did unreasonable disturb them and reduce their quiet enjoyment of their rental unit.

On a balance of probabilities and in accordance with sections 28 and 65 of the *Act*, I accept that there has been a lessening in the value of this tenancy due to the landlord's failure to protect the tenants' right to quiet enjoyment of these premises.. I also find that the tenants have not established that they are entitled to a retroactive reduction in their rent in the order of the $4,000.00 from September through December 2020, that they are seeking in this application.

For the earliest portion of this four month period, the landlord and the realtor supplied evidence that the tenants ignored the realtor's repeated emailed requests to provide the realtor with an ongoing schedule, which could have lessened the impact on the tenants. Without such a schedule, the landlord and the realtor asserted that the tenants only agreed to four of fifteen showings that the realtor proposed during the month of September 2020. While the tenant disputed the number of showings that the realtor had proposed during September, it does seem that the tenants were at least partially responsible for the random scheduling process that occurred during September 2020. Once the tenants did provide a schedule, the realtor was able to incorporate the tenants' wishes to allow for a two hour time slot twice a week for these showings to occur. Although I accept the realtor's assertion that everyone entering the rental

premises was asked to follow established COVID-19 protocols, given Tenant MM's employment as a nurse in a hospital dealing with coronavirus patients, I can fully understand why having multiple people enter their rental unit over a short period of time would cause worry and stress for the tenants.

By October, it would seem that the parties had at least established a pattern whereby the tenants agreed to allow the realtor, prospective purchasers and the prospective purchaser's realtor to enter the rental unit for showings about twice each week. Some of these showings may have been limited to one other realtor and their prospective purchasers; others appear to have involved as many as seven different sets of prospective purchasers. This process seems to have continued relatively unabated until December 21, 2021.

I have also factored into my decision, the evidence provided by the parties with respect to incidents involving the attachment of a lockbox on the property for use by other realtors, an occasion where another realty apparently entered the rental unit with a prospective purchaser without first seeking authorization from the tenant, and where the realtor's son, who the realtor said is a licensed assistant showed the rental property to a prospective purchaser. Although I find that these were relatively isolated and short-term incidents, they do lend some support to the tenants' assertion that the extent of the disturbance they experienced during this viewing process was unreasonable and warranted some type of monetary award for the reduction in the value of their tenancy.

Although this is by no means an exact science, I find that the tenant's loss in the quiet enjoyment of their rental unit does not equate to the 50% rent reduction they are seeking. Rather, I find that the time required to prepare for, to attend, and to clean and sanitize following the two hour viewing sessions results in an overall rent reduction in the order of 20% over a three-month period and not the four-month period they have claimed. Their failure to provide a schedule when requested by the realtor contributed to some of the problems encountered in September 2020, where the realtor had to send many requests for showings, no doubt many at times that the tenants could not accommodate due to their work schedules. Limiting this entitlement to three months, instead of the four months requested by the tenants, also takes into partial account the sworn testimony that the last of the realtor's showings occurred on December 21, 2020.

Based on a balance of probabilities and in accordance with section 65 of the Act, I allow the tenants a retroactive rent reduction of 20% of the $1,895.00 in monthly rent payments they have been making during this tenancy over a three month period. This results in a monetary award in the amount of $1,137.00 ($1,895.00 x 20 % x 3 months =

$1,137.00). This amount reflects only the monthly rent they pay each month as I find their payments for utilities are separate from their monthly rent established in their Agreement.

As the tenants were partially successful in their application, I find that the tenants are entitled to recover the $100.00 filing fee paid for their application from the landlord.

Conclusion

I issue a monetary Order under the following terms, which allows the tenants a monetary award for the loss in value of their tenancy and to recover their filing fee from the landlord:

Item	**Amount**
Retroactive Rent Reduction for 3 Months ($1,895.00 x 20 % x 3 months = $1,137.00)	$1,137.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	**$1,237.00**

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: March 29, 2021

Residential Tenancy Branch