



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, LRE, 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 loss or 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;
- 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 his 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. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

At the outset of the hearing, both parties confirmed that the tenants have moved out, and the tenancy had ended on September 30, 2021. Accordingly, the non-monetary portions of the tenants' applications are cancelled as the tenancy is over.

The landlord confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were received in accordance with section 88 of the *Act*.

Issues

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

Are the tenants entitled to recover the cost of the filing fee from the landlords for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on March 1, 2020, and ended on September 30, 2021. Monthly rent was set at \$1,737.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$868.50, and \$793.70 was returned to the tenants at the end of the tenancy.

The tenants filed this application for monetary compensation in the amount of \$2,000.00 for the landlord's failure to comply with the *Act*. The tenants testified that although they did give permission for the landlord to show the rental unit to prospective tenants, the landlord still had an obligation to provide sufficient notice prior to entering the rental unit in order to ensure the tenants' right to their privacy and quiet enjoyment of their rental unit. The tenants testified that they work from home, and requested that they be provided with at least a phone call or text message prior to entry to ensure that they were not in the shower or bathroom, or occupied with work related matters. The tenants testified that they attempted to address this with the landlord, who felt that they had permission to enter at any time within the designated hours. The tenants testified that they were aware of the landlord entering the rental unit at least twice in a week with no notice. The tenants also submit that they were not provided with a storage locker as one was not available to them.

The landlord disputes the tenants' claims, and provided a copy of a Notice to Vacate form. A section of the form is prefilled, and states "Please feel free to show the suite during the following hours each day for the following month". The following times are handwritten on the form: 10 a.m. to 4: p.m. weekends, from 10:100 a.m. to 5:00 p.m. weekdays. The landlord testified that they were professional, and disputes the tenants' claims.

The landlord testified that a storage locker was only an included facility on an as available basis to tenants, and that the tenants were not charged an additional fee for using this facility.

Analysis

Section 29 of the *Act* prohibits the landlord's right to enter the rental suite except with proper notice or the tenants' permission. The landlord's right to enter a rental unit is restricted, and the landlord must not enter unless:

- (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.

Furthermore Residential Tenancy Policy Guideline #7 states the following:

Where a notice is given that meets the time constraints of the *Act*, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A "reasonable purpose" may include:

- inspecting the premises for damage,
- carrying out repairs to the premises,

- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

However, a "reasonable purpose" may lose its reasonableness if carried out too often. Note that under the Act a landlord may inspect a rental unit monthly.⁵

Where possible the parties should agree beforehand on reasonable times for entry. Where the parties cannot agree on what are reasonable times, and the tenant's quiet enjoyment of the rental unit is interrupted (for example where the house is listed for sale and there are numerous showings of the rental unit), the tenant may apply for arbitration to suspend the rights of the landlord, or an Order that the landlord's right of entry be exercised only on conditions.

Section 28 states the following about the tenants' right to 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...

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

In this case, although I am satisfied that the tenant did provide consent for the landlord to enter in order to show the rental unit to prospective tenants, and although the tenants did provide a window for these showings, I find that the tenants still had a right to reasonable privacy and quiet enjoyment of their rental unit. I accept the tenants' testimony that the landlord had acted in an unreasonable manner where despite the showing window provided by the tenants, the tenants can reasonably expect that the landlord still provide them with prior notice of each entry, and sufficient warning in order to ensure the tenants still have quiet enjoyment of their rental unit. I find the tenants' concerns to be valid, and I find the landlord failed to consider the tenants' rights when allowed entry for a "reasonable purpose". I find the entries no longer reasonable considering the expectation that the landlord could enter the rental unit on multiple occasions within the large window of time without further notice.

Under the Act, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Furthermore, section 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.”

Although I am satisfied that the landlord had failed to ensure the tenants' right to quiet enjoyment of their rental unit, I find that they did not establish how the amount of their claim was obtained, either referenced and supported by similar claims of this nature, or

by providing pay stubs, receipts, statements, or written or oral testimony to support the losses the tenants are seeking in this application.

RTB Policy Guideline 16 states that where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle and the evidence before me, I find that the tenants' enjoyment of their rental unit was impacted by the landlords' actions. In accordance with RTB Policy Guideline 16, I award the tenants nominal damages of \$100.00 for the loss of enjoyment of their rental unit.

The tenant also applied for monetary compensation for the failure of the landlord to provide them with a storage locker. In consideration of the evidence and testimony before me, I find that although a storage locker was an available facility that was included in the monthly rent, this was provided on an "as available basis". I am not satisfied that the tenants were denied a facility that they were entitled to, and I accept the landlord's testimony that one was not available, nor was one promised on a unconditional basis to the tenants. Accordingly, this portion of the tenants' claim is dismissed without leave to reapply.

I find that the tenants are entitled to recovery of the \$100.00 filing fee for their application.

Conclusion

I issue a Monetary Order in the amount of \$200.00 in the tenants' favour for compensation under the Act, as well as to recover the filing fee for their application.

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of 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.

The remainder of the tenants' application is dismissed without leave to reapply.

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: February 10, 2022