Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prompton Real Estate Services Inc. and MacDonald Realty Carmen Leal and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, LRE, O

Introduction
This hearing dealt with an application by the tenant for a monetary order and an order limiting the landlord's right of entry. All parties appeared and had an opportunity to be heard.

The tenant had filed an envelope of material which she stated she had not served on the other parties. I advised everyone at the start of the hearing that I could not consider evidence that had not been served on the opposing parties. I have not read that material nor has it been considered in the preparation of this material.

At the beginning of the hearing the parties advised that the rental unit has been sold so access by the landlord is no longer an issue.

Issue(s) to be Decided
Is the tenant entitled to a monetary order and, if so, in what amount?

Background
This tenancy commenced April 1, 2010 as a one-year fixed term tenancy and continued thereafter as a month-to-month tenancy. The monthly rent, which is currently $1762.00, is due on the first day of the month.

The rental unit is owned by two individuals. The male owner died earlier in this year and the unit forms part of his estate. The rental is managed by PRE on behalf of the owners.

The rental unit is a one bedroom plus den condominium located in a high rise building. Access to the building is controlled by a FOB system. There is also an on-site concierge and floor and bike security patrols. The rental agent had a master key for the whole building. Only the tenant had the key for the front door.

On January 15, 2014, the unit was listed for sale. The listing realtor was associated with PRE. The listing agreement was for the period January 15, 2014 to March 30, 2014. According to the tenant's document there were nine appointments including realtor viewings between January 29 and March 28.

The unit was off the market from March 31 to May 23. It was relisted with MRE on May 23. According to the tenant's records there were 33 appointments, including no shows and realtor viewings, between June 4 and September 17.

There were numerous issues between the tenant and the agents and the tenant filed this application for dispute resolution on August 13.

On September 21 the owner received and accepted an offer to purchase. The completion date of the sale was September 25, 2014.

The tenant has been served with a 2 Month Notice to End Tenancy for Landlord's Use. The effective date of the notice is November 30.

The tenant found the whole experience of living in a rental unit that was listed for sale very trying and claims compensation for expenses and losses arising from the experience. Each of those claims is dealt with below.

Evidence, Analysis and Findings

Test to Be Applied

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

Cost of Preparing for the Hearing

The tenant claims the cost of supplies, postage and courier fees as well as 15 hours of her employee's time at the full charge out rate of $75.00/hour. As explained in the hearing the *Residential Tenancy* Act does not give arbitrators the authority to award compensation to any party for the costs of preparing or serving their claim or the supporting evidence, of attending a hearing, or retaining lawyers or other advisors. Accordingly, this claim is dismissed.

Cleaning

The tenant claimed $273.00 for maid service on February 14, August 12 and September 11. The tenant explained that because there were so many people through the unit it was necessary to have the unit cleaned.

However, the cleaning invoices do not appear to relate to the showings. For example, there were only two showings – on January 29 and February 7 – prior to the February 14 cleaning invoice and no showings in the two weeks prior to the September 11 invoice.

As the evidence does not show any correlation between the cleaning schedule and the showings, this claim is dismissed.

Security Cameras

The tenant claimed $2200.00 for the installation of security cameras. Although her employee was at the unit for every showing the tenant explained that she thought the cameras were necessary because her employee could not be in all the rooms at once. She also explained that she had many valuable possessions in her suite including jewellery and artwork. The tenant valued the contents of her unit at $70,000.00. She is insured.

The tenant did not submit an invoice for the installation and rental of the cameras.

Because there is no documentation to support this claim, it is dismissed.

Even if the tenant had submitted the invoice the claim would have been dismissed. There never was a general open house. Each potential purchaser was accompanied by at least one licenced real estate agent and the tenant's employee. The risk of theft or damage in this situation was minimal. Any expense incurred by the tenant for additional cameras was strictly for her peace of mind and is not an expense for which the landlord can be held accountable.

Renovations

In April of 2013 the tenant wrote the landlord requesting a tenant improvement allowance and upgrades to the unit. The proposed improvements were painting the unit and replacing the flooring throughout the main living area.

She told the landlord: "As an interior designer by profession, who specializes in residential design, I have years of experience with home renovations. I will select the correct flooring that will meet all strata requirements (11C 65) and complement the

space as well as select appropriate paint colours. I will also purchase materials at a discounted price (25% - 30$ off retail prices; wholesale price: Engineered hardwood $5.50 and laminate $2.29) and take care of managing the trades. Please find the approximate costs savings attached below for review."

There followed a chart comparing the retail prices to the wholesale prices. The retail price for design and management fees was stated to be $3500.00; the wholesale rate was $0.00.

The owner agreed to the renovations. The tenant selected the materials, managed the project, and moved out of the unit for two weeks while the work was being done. She paid for everything and on June 19, 2013, invoiced the landlord for $4537.95 for labour and materials for the flooring and the painting. The invoice was paid by the landlord with a cheque dated July 5, 2013.

The tenant now claims and additional $4537.95 – the retail cost of the materials – and $1429.46, the 30% design fee plus GST for this project. Her invoice for the design work is dated August 20, 2014.

The tenant's position is that they type of work is how she earns her living. She was prepared to give up compensation for her time and expertise if she was going to have the benefit of a long-term tenancy in the space. Instead, the unit was listed for sale within a few months of the work being completed. It is her opinion when she looks at listings for similar properties in the area that the landlord was able to ask for and ultimately obtain a higher price because of the improvements made to the unit. Since the circumstances have changed for her (and also the owner) she is no longer prepared to give the landlord the discount set out in her original proposal.

When the tenant made this proposal she had a month-to-month tenancy. Although she hoped to have a long term tenancy there was no guarantee. For example, if the landlord or a member of his immediate family had decided they wanted to live in the unit he could have served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use and the tenancy would have been ended.

The tenant asked the landlord to agree to the improvements based upon a particular price. The landlord agreed based upon that price. She invoiced the landlord for that price and received payment in full. That was the end of the transaction.

The tenant did benefit from this arrangement even though it was not for as long a period as she would liked in that not only was her unit upgraded but she was able to control

the materials and finishes used, the tradesmen hired, and the timetable for the improvements.

There is no contractual basis for granting this claim. Accordingly, it is dismissed.

Tenant and Employee Time

The tenant claims $13, 958.44 for administration and employee time. This claim was described in an invoice from the tenant's company to PRE dated September 17, 2014 as 45 hours of the tenant's time at her charge out rate of $150.00 per hour and 87.25 hours of her employee's time at her charge out rate of $75.00. 15 hours of the employees time has already been decided under the heading "Cost of Preparation for Hearing".

Her employee's time spent at the rental unit for each showing is detailed on the showings log. With one exception the tenant never attended a showing; the tenant had her employee attend all showings on her behalf.

The tenant also claimed 21 hours of employee time for correspondence; described as 30 minutes spent on e-mails and communications for each showing.

The tenant never provided any breakdown of the 45 hours she claimed for her time. In her oral testimony she said it was for time spent cleaning up the rental unit, putting away her office things, correspondence and other communications related to the showings.

The parties all filed copies of various e-mails and letters – in total several inches worth. The correspondence sets out the following sequence of events.

When the property was first listed the rental agent advised the tenant by letter. The letter also informed the tenant that:

- Her lease was month to month.
- Should the suite sell and the new owner want to occupy the unit, they would need to give her two calendar month's notice and her final month free of rent.
- The realtor would contact her directly to coordinate showings.
- "We suggest that showings be coordinated to ensure someone will be at home."

The tenant would not allow the agent to take any photographs or video of the interior that might include any of her personal possessions. The tenant also set a viewing schedule of two showings a week, on Wednesday at 10:00 am and 5:30 am, to be

confirmed by noon on Monday. The agent found these restrictions very difficult and expressed his frustration.

When the property was relisted in May the tenant again refused to allow any photographs or video of the interior of the unit. She set a showing schedule of Wednesdays at 11:00 am and 5:00 pm.

When this did not work for the agent on July 7 the agent posted a 72 hour notice for future showings. The tenant responded by proposing a new schedule of Tuesday at 11:00 am and Thursdays at 5:00 pm. The agent tried to live with this schedule for a short time.

On Monday July 21 the agent posted a notice for entry on Friday July 25 for one hour and Sunday July 27 for one hour. Her e-mail explained that she needed those times in addition to the Friday showing and a Monday showing. The agent also asked to show the property on Sunday from 2:00 pm to 2:30 pm “for clients that work all week and are able to get in only on Sundays”. The tenant refused saying that “the weekends and holidays are not an option”. She asked that the appointment be scheduled for Monday evening.

The tenant refused to allow any showing that weekend because she was hosting a birthday party.

On July 28 the tenant notified the real estate agent that she was not to have any contact with her or her employee and that all communication must be through the rental agent. When the real estate agent tried to arrange showings for the following week the rental agent advised that the tenant was only prepared to allow showings on Tuesday at 11:00 am and 5:00 pm and Thursdays at 11:00 am and 5:00 pm.

During this time the only person with the key to the rental unit was the tenant. As a result the unit could only be accessed for a showing if the tenant or her employee were there to let people in.

In her oral testimony the tenant explained how the times she proposed fit into her schedule. She also explained that her work life is very busy and the weekends are her time. Although she would have considered a Saturday showing Sunday was non-negotiable.

Eventually the owners contacted a lawyer. The lawyer’s letter to the tenant dated August 12 advised that since a mutually agreeable schedule could not be negotiated

they would be providing her with 72 hour written notice for each showing, posted to the door. The letter advised the tenant that the legislation did not require that she be present for the showings. The lawyer advised that there would be a maximum of three showings per week, each of a maximum of two hours.

In an e-mail dated August 15 the tenant directed the real estate agent not to contact her directly as she deemed that harassment. "Contacting me personally is not an option. Stick to the law and the stated options for notices. Post notice on the door, regular mail or registered mail."

Thereafter notices were posted for potential viewings and the tenant complied with the notices.

In her oral testimony the tenant talked about how stressful this experience was, how stressful not having a consistent showing schedule was, her feeling that she was being pushed out of her home, and the importance of her home in a busy responsibility-filled life. She said the experience had negatively affected her health but did not provide any medical evidence.

The law related to showing a rental unit that is listed for sale was summarized in RTB Fact Sheet 125:

> "Before showing the rental unit, the landlord must have the tenant's agreement or give the tenant proper written notice that states the date, the time and the reason for entry. The tenant must receive the notice at least 24 hours, and not more than 30 days, before the time of entry.
>
> Ideally, a tenant and a landlord agree on a schedule of viewing times to include in a single notice. Otherwise, the landlord must give the tenant notice each time before showing the rental unit. When notice has been given, the landlord can show the rental unit even if the tenant is not at home."

Unlike some of the earlier correspondence by parties to this situation, the lawyer's letter accurately reflected the law.

The written record shows that the tenant created most of the work, expense and stress herself. She tried to impose showing schedules that bore no relationship to ordinary commercial practises or the needs of working people looking for a new home. Much of the correspondence generated by the tenant was all about limiting access to the unit, including denying access to a potential purchaser and their agent because they arrived a few minutes after the appointed time.

The effect of refusing to have any contact with the real estate agent meant that the agent had to post notices three days in advance so that she had times available in case someone wanted to look at the unit that week. Consequently the tenant had to live with the blanket notices instead of scheduled appointments.

The tenant could take any measures she wished to protect her valuables including putting them in safe storage for a while, installing cameras, being present at the showings, or hiring someone to attend the showings on her behalf, but legally the cost of any measures she took were her own expense, not the landlord's.

The tenant's claim for compensation for her time and her employee's time is dismissed.

Loss of Quiet Enjoyment

The tenant claims $5000.00 for loss of quiet enjoyment. A landlord has the right to sell his property and for that purpose, to show the property as long as the legal requirements for notice to the tenant are met. This owner complied with the requirements of the *Residential Tenancy Act.* Even if the tenant found this stressful, compliance with the legislation does not comprise breach of a tenant's right to quiet enjoyment. This claim is dismissed.

Filing Fee

As the tenant was unsuccessful on her application no order for reimbursement of the filing fee will be made.

Conclusion

The tenant's claim is dismissed in full for the reasons set forth above.

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: October 21, 2014

Residential Tenancy Branch