



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC FF

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 landlords 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 landlords, pursuant to section 72 of the *Act*.

All parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlords confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlords were 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 an order requiring the landlords to comply with 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.

The tenants testified regarding the following facts. This fixed-term tenancy began in June 2016 with monthly rent currently set at \$1,600.00, which is payable on the first day of each month. A copy of the written tenancy agreement was submitted in evidence.

The tenants testified that the landlord had entered their premises on several occasions without any notification, or their permission. The tenants are seeking \$5,000.00 in compensation for their loss of quiet enjoyment. The tenants testified that the landlord entered their suite on several occasions, in June of 2016, twice in September of 2016, and March of 2017. The tenants also testified that there was an incident in March of 2017 where tenant SM's brother came to visit and use the tenants' jigsaw when the landlord FJ confronted the brother about being on the property.

JM, SM's brother, testified in this hearing that he was visiting on March 5, 2017 when he came to use his brother-in-law's jigsaw for a personal project he was working on. He testified that the landlord FJ was extremely aggressive towards him, even though it was only 6:50 p.m. in the evening, and the project took him seven minutes total. The tenants testified that the landlords harassed them and their guests, and denied them the ability to have guests come visit.

The tenants, in their application, requested an order to allow them to have SM's father-in-law who is visiting from Mexico, stay in the suite for four months without having to pay additional fees or rent.

The landlords did not dispute the fact that they had entered the tenants' suite on the above mentioned occasions, but they believed that they had the right to do so. FJ testified in this hearing that he had only entered the tenants' suite in order to fulfill his duties as a landlord. The incident in June 2016 was because he had wanted to tow a black car illegally parked in the driveway. He testified that he had texted the tenants before entering on the other occasions, and never did so without their knowledge.

The landlords testified that they were concerned about guests because of liability issues with their home insurance.

Analysis

The tenants provided undisputed sworn evidence in this hearing that the landlords had entered their suite on several occasions. Section 29 of the *Act* prohibits the landlords' right to enter the rental suite except with proper notice or the tenants' permission. The landlords' right to enter a rental unit is restricted, and the landlords 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.

I find that that the reasons provided by the landlords did not meet any of the criteria above, and therefore I find that the landlords have failed to comply with section 29(1) of the *Act*.

I find that the tenants established in their application that the landlords did not comply with sections 28 and 29 of the *Act*. Accordingly I find that the tenants are entitled to monetary compensation for the losses that they had incurred as a result of these breaches. The tenants requested compensation in the amount of \$5,000.00. Although I find that the tenants are entitled to some compensation, the tenants did not provide sufficient justification for why they should be compensated the requested amount. As the tenants did establish that the landlords had entered their suite on at least four

occasions between June 2016 and March 2017, I find that the tenants are entitled to some compensation. Accordingly the tenants will be compensated \$400.00 for the landlords' breaches, which constitutes \$100.00 for each of these breaches of their tenancy agreement.

The tenants also applied for an order allowing their father-in-law to stay as a guest in the unit for four months without having to pay any additional fees or rent. I note that in the written tenancy agreement submitted in evidence, it is stated that "ALL guests shall be limited to stay in the residence no more than any six (6) calendar days in a year and a maximum of one guest per the number of bedrooms in the rental unit. Any contravention of this by the Tenant shall result in a charge of \$800.00 per month per guest, plus 50% of that months utility bills of electricity and gas regardless of whether utilities are included or not included in the term of the Lease. Maximum one guest per visit for this Lease. Guest exceptions: see attached Addendum". Condition E of the Addendum reads: "Guest exception: Mr. Y.R as guest—is permitted to reside for maximum period of six months consecutive at this address". I note in the landlord's letter, dated February 13, 2017, that Y.R. is the brother-in-law of the tenants.

All parties signed this tenancy agreement on May 17, 2016, and I find that the agreement is clear that YR is the only pre-approved guest who is allowed to reside in the suite for a maximum of six months without additional cost or penalty. Any other guest is limited to a stay of no more than six days, and is subject to the restrictions and additional charges as stated on the tenancy agreement. Accordingly, I dismiss the tenants' application for an order requiring the landlord to provide additional access to guests for stays that exceed the terms in the written tenancy agreement.

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

Conclusion

I allow the tenants' application for monetary compensation for the landlords' breach of sections 28 and 29 of the *Act*. I also allow the tenants to recover the filing fee from the landlords for this application.

I allow the tenants to implement a monetary award of \$500.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$500.00, and the landlord(s) must be served with **this Order** as soon as possible.

Should the landlord(s) 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 tenants' application for an order requiring the landlord to allow additional guests to stay beyond what is allowed in the tenancy agreement, regulation, and *Act*, is dismissed.

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: May 9, 2017

Residential Tenancy Branch