



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, LRE, OLC, MNDC, FF

### Introduction

The tenant applies to cancel a Notice of Rent Increase and to restrict the landlord's right of entry, require him to comply with the law regarding landlord entry and to recover compensation for alleged excessive exercise of a landlord's right of entry.

The matter of the rent increase was resolved at the start of this hearing. It was agreed that effective January 1, 2019 the tenant's rent would be increased by 2.5%.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing and only if referred to by a party during the hearing.

### Issue(s) to be Decided

Has the landlord properly exercised his right of entry? Have the number of entries been excessive? If so, is the tenant entitled to compensation?

### Background and Evidence

The rental unit is a one bedroom condominium apartment. The landlord is the owner. The tenancy started June 1, 2015. Currently the monthly rent is \$1653.96. There is a written tenancy agreement though it was not produced at hearing.

In the fall of 2018 the landlord decided to list the condominium for sale. It was listed around October 15.

It is apparent that during the remainder of October the landlord through his realtor conducted a number of showings and open houses. The communications referred to indicate that the parties were communicating by email about the entries, their timing and frequency, all without issue.

It appears that the tenant pre-approved most all of the requested entries, some on less than 24 hours notice, until the weekend of November 3. She was away from her home and discovered through a friend that there were people in her apartment. It is her position that the landlord did not have approval to show the premises on that day (he landlord says he did have permission). The tenant called the police, who attended and directed a realtor and her clients to leave the apartment.

At that point, what had been a reasonable relationship between the parties disintegrated and this application was brought.

The landlord says he has tried to accommodate the tenant, who works shifts. He has contacted her by email to arrange showings on less than 24 hours notice and if the tenant does not respond then his realtor does not attend. From the start he agreed to reduce the rent by \$200.00 to compensate the tenant for the inconvenience of showings and open houses but she ended that arrangement by her actions on November 3 (the tenant says the reduction was to \$1450.00 and that it was only for the month of November).

### Analysis

The *Residential Tenancy Act* (the “Act”) provides:

**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.

A landlord's right to enter is provided for in s. 29. The relevant portions of that section state:

**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;

Residential Tenancy Policy Guideline 7, "Locks and Access" addresses the issue:

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.<sup>5</sup>

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.

Clearly, showing the premises to prospective purchasers is an acceptable reason for giving notice to enter, but it must not be excessive.

In my view the parties achieved an agreement about showings which allowed the landlord's realtor to gain access fairly frequently and hopefully without disturbing the tenant and which allowed open houses. In exchange the tenant's rent would be reduced to \$1450.00 per month.

I can reach no conclusion about the November 3 incident other than to say that it appears the tenant has a sincere belief it was a surprise to her, an invasion or violation of her diminishing enjoyment of her home and that the landlord sincerely thought the entry had been approved. I consider it very unlikely that a realtor would enter a rental unit to show people without a clear confirmation that the tenant had been properly notified or had consented.

Nevertheless, the problem with the agreement the parties reached is that neither appears to have put a cap or limit on what the other may impose or consider reasonable.

I find that reasonable entry in the circumstances of this case and based on the rent reduction the parties have agreed to is as follows:

1. No more than four open houses per calendar month commencing January 3, 2019, unless the tenant agrees in writing otherwise. All open houses are to be conducted on a weekend and either the parties agree in writing to which day or days or the landlord must provide proper written notice in advance. No open house is to last more than four hours unless the tenant agrees in writing otherwise.
2. No more than three entries per week for the purpose of showing the rental unit to prospective buyers unless the tenant agrees in writing otherwise. All entries are to be either with the tenant's written consent or by lawful notice of entry provided in accordance with the *Act*, including the length of entry anticipated. Subject to the parties' agreement otherwise, no such entry may last more than one hour, though multiple prospective purchasers may attend during that time.

3. The parties may lawfully provide notice or consent to the other by email and email attachment, in accordance with the *Electronic Transactions Act*, S.B.C. 2001, c. 10. If the landlord wishes to give the tenant notice of entry that notice must comply with s. 29(1)(b) of the *Act*.
4. The tenant's rent will remain at \$1450.00 plus the 2.5% increase effective January 1, 2019, so long as the rental unit is listed for sale or until the landlord notifies the tenant that all showings will cease for a period not less than 30 days. Thereafter the rent will revert *pro rata* to \$1653.96 plus the 2.5% increase. The landlord may represent that higher rent to prospective purchasers
5. The parties are free to renegotiate any or all of the foregoing conditions.

It should be noted that a tenant's presence is not a requirement if a landlord provides proper notice. She is entitled to be in the rental unit during a landlord's entry but If she is not available to attend she is free to have an agent attend and monitor any showing on her behalf. Similarly, by law a landlord wishing to exercise a right of entry is not required to take into account a tenant's work schedule.

In result, I decline to otherwise restrict the landlord's right of entry or access or to make any order that the landlord comply with the law or the tenancy agreement or to grant the tenant's request for a monetary award.

Conclusion

The tenant's application is allowed to the extent set out above. In all the circumstances I award her recovery of \$50.00 of the \$100.00 filing fee and I authorize her to reduce her next rent due by \$50.00 in full satisfaction of the award.

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 22, 2018

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Residential Tenancy Branch