

Case Study - Property Management - access to property and quiet enjoyment

Relevant Facts

The Complainant entered into a 26-week lease on a property. At the conclusion of the lease, the owner wished to use the property as their residence. However, the Property Agent initially failed to issue a valid notice to vacate which resulted in a delay of 4 weeks before the property would become available to the owner.

After a valid notice to vacate was issued the Complainant alleged that she and her family were not afforded quiet enjoyment of the Property on the basis that the Property Agent insisted that tradesmen be allowed to enter to sand and polish the floorboards, undertake painting and prepare quotes for floor coverings as well as requesting that the landlord be allowed access to a section of the garage where the landlord's possessions were being stored.

The Complainant said that the works amounted to renovations, not essential maintenance. The Complainant further claimed that the Property Agent did not accept their refusal to allow entry for renovations and quotes, which required the Complainant to obtain legal assistance to prevent tradesmen from entering the Property without permission.

Ground of complaint

The ground of complaint was that the property agent failed to act in a fair, honest and reasonable manner to the Complainant and her family as tenants.

Discussion

The evidence indicated that the Complainant and her partner and/or legal representative provided repeated assertions to the Property Agent that that the nominated works were not required repairs and that the Complainant would not be allowing entry for the work to be undertaken on the basis that they expected quiet enjoyment and use of the Property until the day of vacation from the property. However, despite these protests by the Complainant, the Property Agent continued to contact the Complainant and her partner via texts and emails to organise dates when tradespeople would attend the property to undertake work that the owner wished to have completed prior to residing in the property.

During the discussions the Property Agent advised that access to the property was valid as notice was given under the *Residential Tenancy Act 1997*, however this is for an owner or their nominated representative to attend.

The Property Agent subsequently organised a routine quarterly inspection under the *Residential Tenancy Act 1997*. The Complainant did not give permission for any parties other than staff of the Property Agent's Agency to enter the property for the purpose of the inspection. At this inspection time the Property Agent also requested that access to the locked storage bay be provided to the owner so he could store additional belongings. After seeking legal advice, the Complainant agreed to provide access on one occasion but advised that any further requests for access were required to be negotiated with 2 days written notice.

The evidence confirmed that the Property Agent had not arranged tradesmen for the purpose of meeting commitments under the residential tenancy agreement, rather for them to undertake renovations for the owner, who would be occupying the Property after the Complainant vacated.

The Board considered that the Property Agent's notification to the Complainant that floor sanders and painters would be attending the Property on given dates are instructions rather than requests.

Finding by the Board and actions taken

The Board determined that the complaint was substantiated as the Property Agent's conduct in regard to the continued attempts to require the Complainant and her partner to allow tradespersons to undertake work other than required maintenance during the term of the Agreement was not of a standard of competence and diligence that the public is entitled to expect from a reasonably competent property agent.

The Property Agent's conduct was characterised as unsatisfactory professional conduct, but of a minor nature and the Board reprimanded the Property Agent pursuant to section 101(6)(a) of the *Property Agents and Land Transactions Act 2016* (the Act).