



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNDC, OLC, & FF

Introduction:

This hearing dealt with the tenants' application requesting that the landlord comply with the tenancy agreement and a monetary claim related to loss of quiet enjoyment of the rental unit. Both parties appeared and were provided the opportunity to be heard and respond to the evidence of the other party.

Issues to be Determined:

Is the landlord failing to comply with the tenancy agreement? Are the tenants entitled to a monetary claim due to loss of quiet enjoyment?

Background and Evidence:

This tenancy began March 1, 2007 for the monthly rent of \$1,056.00 and a security deposit of \$500.00. The tenants entered into a tenancy agreement which included the term that there would be no smoking in the rental unit.

This dispute arises out of the tenants complaint that their quiet enjoyment of the rental unit is being impacted by other occupants who are not complying with the no smoking policy in the rental unit.

The main issue relates to another occupant who has not been following this policy. However, the landlord indicated that when this occupant signed the tenancy agreement the new no smoking term was not included in their tenancy agreement. The landlord indicated that this occupant has subsequently agreed to a no smoking term in her tenancy agreement after the complaints from these tenants.

The tenants also object to persons smoking in an area outside of the rental building. The landlord indicated that people do smoke here however, it is in a location approximately 20 feet from the rental unit and adjacent to the public alley. The landlord submitted that they cannot easily monitor or control this area.

Analysis:

The tenants clearly wish to be in a non-smoking building. However, as the evidence shows this building is not currently a non-smoking building. I accept that the landlord is taking the necessary steps to have the building completely non-smoking.

I accept that there is evidence that one occupant was smoking and that the landlord responded to complaints received about this smoking. Although there is a dispute about whether this occupant has fully complied, I am satisfied that the landlord has taken all reasonable steps to remedy the situation. I acknowledge however, that this individual did not have a non-smoking term placed into the tenancy agreement.

Although I accept that the tenants have an aversion to smoking, I have difficulty accepting their claim that they are being affected as severely as submitted. The tenants occupy a rental unit on the third floor. The offending smoking appears to have occurred outside on one of the first floor balconies and away from the building by at least 20 feet. While it is possible that some smell of smoke may enter their third floor unit it would be very minor.

I accept that the landlord has acted reasonably in the circumstances to help remedy the situation. The other occupant has agreed to not smoke in the rental unit or on the balcony and has verbally agreed to comply with a no smoking policy. I am satisfied that the landlord will address any further breaches in a reasonable manner. I also note that the landlord agreed to send out a reminder notice to all tenants respecting the no smoking policy.

Beyond this I find that the landlord cannot do much more. I do not accept that the landlord is responsible for damages due to the tenants' experience of smoke fumes as presented. If the tenants continue to find the circumstances unacceptable to their living conditions they may want to consider finding new rental accommodations.

Conclusion:

I dismiss the tenants' application.

Dated December 23, 2008.

Dispute Resolution Officer