

## **DECISION**

**Dispute Codes:** LRE, MNDC, OLC

This hearing dealt with an application by the tenant for a monetary order for compensation for loss under the *Act*.

The tenant's claim is based on 1) an incident on April 31, 2009 whereas the caretaker asked him for entry into his unit without giving the required written notice; 2) another incident whereas the water to the building was shut off for ½ hour without giving the required written notice; and 3) smoking in the common area.

### **April 31, 2009 Incident**

The tenant gave the following evidence regarding an incident that took place on April 31, 2009. At 8:30 a.m., the building caretaker, AL, knocked on his door and asked for entry. The tenant asked her to wait until he left the unit which she complied. The tenant maintained that the landlord's request to enter his unit on this occasion was made without giving the required written notice and therefore the landlord has breached Section 29 of the *Residential Tenancy Act*. The landlord explained that the unit directly below the tenant complained of a water leak from the upstairs unit. Therefore, the building caretaker found it necessary to check out the tenant's unit and an adjacent unit for the source of the leak. The tenant further disputed that there was no emergency and said that there were just a few drops of water going into the unit below him. Later, the tenant admitted that he had no knowledge of any of the details regarding the water leak in the unit below him.

Section 29 of the *Act* states that a landlord may enter a rental unit without giving the required written notice if an emergency exists and the entry is necessary to

protect life or property. In this case, I find that the landlord has proven that there was a water leakage problem in the unit below the tenant's unit; it was an emergency; and entry into the tenant's unit was necessary to protect the property. Accordingly, I also find that the tenant has not proven any breach of Section 29 of the *Act* by the landlord. I therefore dismiss the tenant's claim for compensation based on this incident.

#### May 12, 2009 Incident

The tenant gave the following evidence regarding an incident that took place on May 12, 2009. At 8:45 am when he was taking a shower, the water was shut off for ½ hour. He claimed that the landlord had failed to give the required written notice for the interruption of water service and therefore the landlord has breached Section 27 of the *Act*. The landlord said that they always posted notices in the common areas on issues that affected the whole building. Specifically, they would post on the front door, back door, bulletin board, an area above the mail boxes, laundry room and doors to hallway. The landlord maintained that they had posted a notice to notify the tenants regarding the brief interruption of water service on May 12, 2009. I have preferred the landlord's testimony as it was supported by statements made by the building caretaker and samples of similar notices submitted for this hearing. Furthermore, no complaint was received by any other tenant in the building. Accordingly, I find that the tenant has not proven any breach of Section 27 of the *Act* by the landlord. I therefore dismiss the tenant's claim for compensation based on this incident.

#### Smoking in the Common Area

The tenant gave the following evidence regarding smoking in the common area. For the past two years, there had been frequent smoking in the common area whereas smoking was not permitted in such area. Therefore, the landlord has breached Section 32 of the *Act* by failing to maintain the residential property in a

state that complies with the health standards required by law. The landlord gave the following evidence on the same issue. The tenant had never complained to her about the smoking problem. The first time, she became aware of the problem was when she received the application for dispute resolution on May 25, 2009. Thereafter, she took immediate action to stop all smoking in the common area. The tenant agreed that he had never complained to the landlord about the smoking problem before his application for dispute resolution. He said that he wanted to “black mark” the landlord. The tenant also agreed that since the landlord’s receipt of the application for dispute resolution, the smoking in the common area had stopped.

Based on the above, I find that the tenant had not notified the landlord of the smoking problem in the common area before the application for dispute resolution. I therefore find unreasonable for the landlord to remedy a problem when she had no knowledge of it. Accordingly, I also find that there was no breach of Section 32 of the *Act* by the landlord. I therefore dismiss the tenant’s claim for compensation based on smoking in the common area.

Dated July 02, 2009.