



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes FF, MNDC

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and the witnesses the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witnesses.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for a monetary order for \$4200.00; on the application it stated \$4900.00 however at the beginning of the hearing the applicants stated that that was a mathematical error.

Background and Evidence

The applicants are asking for compensation equal to three months rent because they believe the landlords have failed to comply, with their obligations under the tenancy agreement, to provide a smoke-free environment.



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The applicants allege that the other occupants of the rental property have been smoking both cigarettes and marijuana and the smoke from both has inundated their suite, to the point where it is affecting their health.

The applicants feel that the landlord has failed to deal with the smoke issue and as a result they have had to suffer the effects of the smoke for a substantial length of time.

The applicants are therefore requesting compensation equal to three months rent. Rent is \$1400.00 per month and therefore the applicants are requesting a total of \$4200.00.

The applicants are also requesting that the respondents bear the \$50.00 cost of the filing fee that they paid for this application for dispute resolution.

The respondents believe that they have done everything they can to respond to the applicants complaints.

They have attempted to verify the complaints however each time the applicants complained about smoke they contacted the other tenants and each time the other tenants assured them that they were not smoking in the rental suites.

Witnesses for the respondents also both testified that at no time do they ever smoke in the rental units and that all smoking is done outdoors, however they both stated that it is possible that they have smoked with the door open.



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Analysis

It is my decision that the applicants have not met the burden of proving that the landlord has been negligent in this matter.

The landlord is in the unenviable position of being stuck in the middle, with one tenant saying one thing and the other tenant saying the exact opposite and therefore it's very difficult for the landlord to justify evicting one or the other of these tenants or to change a situation that they been unable to verify.

It is my finding that the landlord took a reasonable steps by contacting the other tenants and informing them that they are not to be smoking in the rental unit however since the other tenants adamantly denied ever doing so, there is not much else the landlord could do.

The applicants have provided testimony and numerous witness statement letters that all state that there is smoke smell present in the rental unit, and perhaps today's testimony has shed some light on why that may be. The witnesses testified that they always smoke outside but under questioning both admitted there may be times they have left the door open, and therefore although they are following the rules of the tenancy agreement they may be inadvertently allowing smoke into the rental unit.

Although as I stated earlier I am not convinced that there is any negligence on the part of the landlord, I would suggest that the landlords may want to send a letter to all tenants in the rental unit suggesting that in future when they are smoking outside they ensure that all doors and windows, in close proximity, be closed so as not to allow the smoke to permeate the house.



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Conclusion

This application is dismissed in full without leave to reapply.

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 10, 2010.

Dispute Resolution Officer