



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes FF, MNDC, OLC

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

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for a monetary order for \$3027.20, a request for an order that the landlord comply with the tenancy agreement, and a request of the respondent bear the cost of the filing fee that was paid for the application for dispute resolution.

Preliminary matter

The applicant stated that his copies of the witness letters and one e-mail have had the names of the parties blacked out, and therefore he wishes that these documents be excluded from consideration.

The landlord stated that she did blackout the names of the parties on the witness letters and on an e-mail to protect the privacy of those parties.

It is my decision that since the tenant has not been served with copies of the witness letters or the one e-mail in the same form, with all the content, I will not consider those portions of the landlords evidence.

Background and Evidence

The applicant stated that:

- This is a no smoking building; however the landlord has failed to enforce the no smoking rule.
- The occupants of apartment 111 continually smoke cigarettes, marijuana, hashish, and likely other substances as well.
- He has filed numerous complaints with the landlords about the problem, however the landlords have failed to deal with the smoking from unit 111, and as a result he and his family frequently have to put up with a strong smell of smoke coming through their windows.
- He also believes that the marijuana smoke adversely affected his young son and therefore he believes this is a health risk that must be dealt with.

As the landlord has failed to deal with the issue of the smoke he believes he is entitled an ongoing rent reduction as follows:

- 33% rent reduction for the months of June and July August and September.
- 15% reduction of rent for the months of October through May.
- Money to cover the cost and operation of an air conditioner/purifier.

The applicant also requests an order for the following amounts:

Back rent reduction from July 2009 through August 2010	\$2698.13
Filing fee	\$74.00
Total	\$3572.13

As well as the rent reduction for loss of use and enjoyment, the tenant is also asking for \$51.00 per month for operating costs for the air conditioner/purifier

The respondent testified that:

- They have had numerous complaints from the applicant and have investigated numerous times, however they have never been able to smell smoke of any kind nor have they ever seen any other tenants smoking.
- They have spoken with the tenants of 111, and they denied ever smoking cigarettes, marijuana, or hashish at any time.
- On occasion while investigating the complaints they have actually found the occupants of 111 to be sleeping and therefore it's very unlikely the applicant could have seen them smoking.
- They have spoken with numerous other occupants of the rental property who are in close proximity to Suite 111, and no one has ever smelled or seen anyone smoking.
- The only one who ever seems to smell or see anyone smoking is the applicant and therefore they offered him another suite however he turned that suite down.

The respondents therefore believe they have done everything they can to try and deal with the applicant's complaints however since they been unable to find any smoking by any other tenants in the building they do not know what else they can do. They therefore requests that the applicants claim be dismissed

Analysis

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case is my finding that the applicant has not met the burden of proving that someone is smoking in the rental property.

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The applicant claims that he has seen and smelled smoking on numerous occasions; however every time the landlord investigates they are unable to find any evidence to support the applicants' claims. As

The applicant claims that the reason the landlord is unable to find any evidence is because the landlord takes too long to respond to the complaints, however it is my finding that the landlord has responded in a reasonable manner and taken reasonable steps to try and verify the applicants claims.

The applicant has supplied no supporting evidence, such as statements from other parties who witnessed smoking, and therefore it is just his word, and it is my decision therefore that he has not met the burden of proving his claim.

I fail to see what other steps the landlord could take in this case, as it would be irresponsible for landlord to evict someone just on the word of another tenant and without any further evidence to verify at tenants claims.

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: August 26, 2010.

Dispute Resolution Officer