



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OLC, FF

Introduction

This matter dealt with an application by the Tenant for an Order requiring the Landlords to comply with the Act by ensuring the rental property is smoke-free and to recover the filing fee for this proceeding.

The Tenant claims in her written submissions that the Landlords agreed that no smoking would be permitted on the rental property but that they subsequently rented part of the rental property to other tenants who smoke in common areas and disturb her use and enjoyment of the rental unit. The Landlords claim in their written submissions that it was not a term of the tenancy agreement that the rental property would be smoke-free but in any event, they have asked the other tenants of the rental property not to smoke on the rental property and believe they have complied.

At the beginning of the hearing the Tenant admitted that she has not paid rent for August 2010 and intends to end the tenancy on September 30, 2010. Given that the tenancy will be ending on September 30, 2010 (at the latest), I find that it would be inappropriate to Order the Landlords to take steps (if any) that may affect their obligations to the other tenants of the rental property who will likely continue to reside there once the Tenant's tenancy has ended. Consequently, the Tenant's application for an Order that the Landlords comply with the Act is dismissed without leave to reapply.

The Tenant also argued that she should be entitled to recover the filing fee from the Landlords for her application in this matter. However in the absence of a finding that the Tenant's application would have been successful, I find that there are no grounds for allowing the Tenant to recover the filing fee from the Landlords and as a result, that part of her application is also dismissed without leave to reapply.

Conclusion

The Tenant's application is dismissed 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 16, 2010.

Dispute Resolution Officer