



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, PSF, RR, FF

Introduction

This hearing was convened in response to an application filed by the tenant seeking:

1. A monetary Order for compensation for damage or loss in the sum of \$9541.00
2. An Order that the landlord be compelled to comply with the Act;
3. An Order that the landlord provide services or facilities not provided;
4. An Order that the tenant be allowed to reduce his rent for repairs, services or facilities agreed upon but not provided; and
5. Recovery of the filing fee.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Whether the tenant is entitled to the Orders sought.

Background and Evidence

The tenant testified that he moved into the rental unit in December 2009. The tenant says that the fan over his stove does not have an exhaust pipe to take the air out. The tenant says that when he cooks he must open his doors/windows to get the cooking smell out of the suite.

The tenant also says that the residents in the suites next to him smoke marihuana and the smell seeps through his door. The tenant says he cannot enjoy his balcony because they smoke marihuana on their balcony. The tenant says these other tenants also play strange music that vibrates and affects his heartbeat.

To support his case that the smoke and the noise are affecting his quiet enjoyment of the rental property the tenant produced two X-Ray/Ultrasound Reports, the first dated January 10, 2006 indicating that the tenant has "Possible COPD. No Other

abnormalities” and the second dated March 13, 2007 indicating that the tenant has “Probable COPD, unchanged from Jan .06” examination. The tenant has also produced a note from a doctor dated August 14, 2008 indicating that he has

...chronic gastritis hyper acidity, irritable bowel syndrome and reflux and cervical spondylosis. He has been off work since June 25/08 He needs 3-6 months to recover from his medical problems.

Finally the tenant produced his Tenancy Agreement indicating that tenant was allowed only two persons in the suite. The tenant says that this is not so with other suites. The tenant says the suite next door has 4 persons in it and there are other suites in the building where more than two people occupy the suite. The tenant says he believes that this is discrimination.

The tenant believes that as a result of this loss of quiet enjoyment he is entitled to a monetary order for compensation for damage or loss in the sum of \$8,391.00 calculated as 50% of the rent he has paid for the past 19 months. He also seeks \$50.00 per month for 21 months for the lack of a kitchen exhaust fan totalling \$1,050.00 and recovery of the \$100.00 filing fee he has paid.

The landlord says the building was constructed in 1967. It is one of the first concrete buildings in the City and like all buildings of this era and type of construction there are no exhaust pipes to vent cooking air from the kitchens. The exhaust fan is merely to gather what it can in terms of odours into its filter. The landlord says they cannot now start putting pipes through the concrete construction of the building to allow for out-venting exhaust fans. All that can be done is to change the filter from time to time.

The landlord says that the building is not a “smoke free” building and it never has been. However he recognizes that no one appreciates tenants smoking marihuana. The landlord says signs are posting that drugs are not allowed. On this point the landlord says he has called the police but they have advised that there is little they can do. In any event the tenant says the tenants who live in the suits that this tenant is complaining of have been evicted for other reasons and they are now “...80% out”.

With respect to the issue of other suites having more occupants in them than this tenant’s suite allows, the landlord says that each suite is different and each tenancy agreement has varying terms with respect to the type of accommodation offered including how many can occupy a suite. In particular, with respect to suite 201 which specifically mentioned in the tenant’s complaint, the landlord says the tenants were originally a couple and one child then they had a baby. The children are both boys and

they share one bedroom while the parents sleep in the other. There is nothing the landlord can do about the people having a child. The building is not an adult designated building.

The landlord says that this tenant is simply trying to get money from the landlord by bringing these claims. A few months ago the tenant filed a complaint seeking compensation for loss of quiet enjoyment because his toilet splashed water on him. The landlord says the tenant's claims are frivolous.

Analysis

The tenant has lived in this building since 2009. The evidence is that this building is not a smoke free building and never has been. That the tenant knew he may have a condition that would be exacerbated by smoke is clear because all of the reports he has supplied in evidence which indicate he may suffer from COPD and other medical problems, pre-date the tenancy. Given this knowledge the tenant would have mitigated his loss of quiet enjoyment by choosing to live in a smoke free environment. Further, I accept the landlord's evidence that he has tried to deal with the matter by posting signs and calling the police and that the tenants in question are now vacating. I therefore find that the tenant has not shown that the landlord has stood idly by and ignored his complaints, further I do not find that there has been a breach of a material term of the tenancy as there was no such term of the tenancy (that is an agreement that the building be smoke free) or that the tenant should be compensated for any loss of quiet enjoyment in this regard.

With respect to the stove fan I accept the undisputed evidence of the landlord that this is a function of the building's construction which cannot be changed. The landlord has shown a willingness to supply new filters and I find that no orders in this regard are necessary. Further, I find that the tenant has failed to show why he should be compensated for loss of something which was never there in the first place. As with the smoke free issue, if the tenant required a building with certain specifications, for instance an outside vented stove exhaust fan, then he should have sought out such accommodation. The tenant cannot now expect the landlord to turn a sow's ear into a silk purse.

Finally, with respect to the issue that the tenant has been discriminated against because his tenancy agreement stipulates only two occupants and other suites contain more than two occupants I find this claim to be preposterous. Other suites may accommodate more occupants than this tenant's suite and each tenancy agreement may have

individual clauses to allow for the various types of suites offered. This claim is dismissed.

As the tenant has been entirely unsuccessful in his claims I will not award recovery of the filing fee as requested.

Conclusion

The tenant's claims as follows:

1. A monetary Order for compensation for damage or loss in the sum of \$9541.00
2. An Order that the landlord be compelled to comply with the Act;
3. An Order that the landlord provide services or facilities not provided;
4. An Order that the tenant be allowed to reduce his rent for repairs, services or facilities agreed upon but not provided; and
5. Recovery of the filing fee.

are dismissed.

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: September 12, 2011.

Residential Tenancy Branch