



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to have an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order to have the landlord comply with the *Act*, regulation or tenancy agreement, pursuant to Section 28 of the *Act*.

Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by the parties on September 16, 2010 for 1 year fixed term tenancy beginning on October 1, 2010 that converted to a month to month tenancy on October 1, 2011 for a monthly rent of \$575.00 due on the 1st of each month and a security deposit of \$287.50 was paid.

The tenancy agreement began with the standard tenancy agreement available from the Residential Tenancy Branch website and included a 3 page addendum that had several additional clauses including clause 10 that stipulates: "The Tenant agrees not to smoke inside the rental premises."

The parties agreed in the hearing that the landlord had provided permission for this tenant, as well as other tenants in the residential property, to smoke outside on their individual balconies.

The tenant submitted into evidence a letter dated December 6, 2010 from the landlord entitled "Warning Letter". The letter states that a report has been filed that the tenant was smoking on his balcony and as a result has caused a disturbance to another tenant. The letter goes on to quote Section 28 of the *Act*, there is, however, no indication that the tenant will suffer any consequences should he continue to smoke on the balcony or disturb other tenants as a result.

The tenant has also submitted copies of several written complaints about the tenant above him who has been causing disturbances to this tenant. The written complaints are dated December 8, 2010; May 4, 2011; June 27, 2011; September 19, 2011; September 20, 2011; and September 22, 2011.

The landlord testified that he has begun to investigate the complaints and has spoken to the tenant in the rental unit above this tenant but would like to do some more investigation with the cooperation of this tenant and that that cooperation has not yet been forthcoming.

The landlord seeks to understand the disturbances the tenant is alleging are occurring better so that he can take appropriate action to ensure both tenants receive the quiet enjoyment they are entitled to.

Analysis

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

In this case the parties do agree that the landlord does allow tenants who request the ability to smoke on their balconies. Despite being a verbal addendum to the tenancy agreement, by the landlord's explicit acceptance of this term, I find that it now constitutes a term of the tenancy and the landlord cannot take any action against this tenant during this tenancy for smoking legal substances on his balcony.

In relation to the noise complaints from this tenant, I order that the landlord must, within 6 weeks of receipt of this decision, complete an investigation into the noise complaints lodged by this tenant in relation to the tenant in the rental unit directly above this tenant. I also order the tenant to cooperate with the landlord in this investigation.

I order the investigation includes, but is not limited to, a testing of noises and their sources when all parties (landlord and both rental unit tenants) are aware of the testing being completed. I also order the landlord be available through the provision of direct contact phone number, provided to the tenant after the conclusion of this hearing, so the landlord can arrange to attend the tenant's unit on short notice, at reasonable hours to hear disturbances as they occur during the course of any given day.

I also order that should the tenant be disturbed by the tenant above during the hours identified as "quiet hours" within local noise bylaws the tenant avail himself of any remedies available through locally authorities charged with enforcing bylaw infractions.

I further order that upon completion of his investigation the landlord provide a written notification of his conclusions and intended course of action, in accordance with the

landlord's obligations to both parties under the *Act*, in relation to the complaints. Both the investigation and subsequent report must be cognizant of both tenants' right to privacy and the landlord should not share any personal information of either tenant.

Conclusion

As per the above, I grant the tenant's Application, however, should the tenant fail to participate with the landlord's investigation I order the landlord will have fulfilled his obligations in relation to the above orders.

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: November 15, 2011.

Residential Tenancy Branch