



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FF, O

Introduction

This hearing was convened by way of conference call in repose to the tenants' application for an Order for the landlord to comply with the *Residential Tenancy Act* (Act), regulations or tenancy agreement and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the Act, sent via registered mail on July 04, 2012. Mail receipt numbers were provided in the tenants' documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the Act.

The agent for the tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Are the tenants entitled to an Order for the landlord to comply with the Act, regulations or tenancy agreement?

Background and Evidence

The tenants' agent testifies that this tenancy started on October 01, 2009. Rent for this unit is \$850.00 per month and is due on the last day of each month. This tenancy started as a fixed term tenancy and has now reverted to a month to month tenancy.

The tenants' agent testifies that the landlord is preventing the tenants from using an electric grill outside to cook on. The tenants' agent testifies that there is a clause in the tenancy agreement which states 'No barbeques or Christmas trees or Christmas lights allowed on the premises or in the unit'. The tenants agent testifies that they received a letter from the landlord which was a friendly reminder of the building information in which the landlord has stated that any type of barbeques are not allowed owing to fire risk.

The tenants' agent testifies that the electric grill is not a barbeque and has no open flame. It is placed on concrete and is not near a wooden structure. The tenants agent states that the definition of a Barbeque as defined in the English Dictionary is " a metal frame used for cooking food on over an open fire outdoors.

The tenants' agent testifies that the landlord told the tenants that they could use the grill inside as the landlord lives in a unit above and is annoyed by the cooking smells. The tenants' agent states the grill cannot be used inside as specified on the instructions that came with the grill. The tenants' agent testifies that the tenants use this grill to cook with three or four times a week as the fan in the kitchen does not work and their unit fills with cooking smells if they use the stove.

The tenants' agent argues that it is not the landlords concern for safety that has prompted this ban on the grill or the landlords view that the balconies must be kept clear as other tenants' balconies have barbeques on them and the neighbours including the landlord hang washing on their balconies.

The tenants' agent states that the landlord is not being reasonable and there is a disagreement between the definitions of what a barbeque and grill is.

The tenants have provided a letter from another neighbour who has written to state that his family has not been disturbed by the tenants cooking on their balcony.

Analysis

I have carefully considered the term in the tenancy agreement which relates to the balconies and find the landlord refers only to barbeques in this clause. The definition of a barbeque for all intents and purposes is of a meal cooked out of doors over an open fire. While the landlord may have an alternative definition concerning the electric grill it clearly does not have an open fire. The landlord has not appeared at the hearing today to argue why they have decided not to allow the tenants the use of this electric grill for safety reasons or other reasons; consequently, I find the tenants claim is upheld and the electric grill is not a barbeque as defined under the English Dictionary. If the landlord seeks to eliminate all types of cooking on the balconies the landlords wording in the tenancy agreement must clearly define this.

I HEREBY ORDER the landlord to comply with the tenancy agreement in place between the parties.

As the tenants application has been allowed I find the tenants are entitled to recover the \$50.00 filing fee and may deduct this from their next rent when it is due and payable.

Conclusion

The tenants' application is upheld.

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 02, 2012.

Residential Tenancy Branch