



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

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.

Issue(s) to be Decided

This is a request for a monetary order for \$1275.00 and a request for recovery of the \$50.00 filing fee.

Background and Evidence

The applicant testified that:

- The tenant originally viewed the rental unit on May 2, 2012, and at that time he did inform me that he was allergic to cigarette smoke.
- I informed the tenant that this was a non-smoking suite.
- The tenant subsequently agreed to rent the unit and moved into the unit on May 28, 2012.
- On May 30, 2012 the tenant phoned and told me the unit had been smoked in, and therefore I sent over to people from our Strata council to inspect the unit.
- One of the Strata council members stated that he could smell smoke in the rental unit however the other stated she could not.
- The tenant subsequently vacated the rental unit without the required Notice to End Tenancy and therefore they believe that he should be responsible for rent for the month of June 2012, and one half the rent for the month of July 2012.

The respondent testified that:

- He has a significant allergy to cigarette smoke and that is why he asked the landlords whether or not unit had been smoked in.
- During the initial viewing he told the landlord that he could smell smoke, however the landlord informed him that it was a non-smoking unit and therefore he concluded the smoke smell must be on the clothing of the parties showing the rental unit.
- He also asked the landlord whether smoking was allowed on the patio below the rental unit and the landlord informed him it was not.
- When he went to sign the rental contract at the rental agents office, the rental agents office smelled strongly of smoke as well, and therefore he assumed that must be what he was smelling when he viewed the rental unit originally.
- He therefore moved into the rental unit under the assumption that it was a non-smoking unit, only to find on the first night there that there was a smoke smell in the unit, and as a result he ended up having an allergic reaction to the smoke.
- He phoned the landlord on May 30, 2012 and informed her of the fact that the unit had been smoked in and the landlord sent over two Strata council members.
- One of the Strata council members immediately stated that he could smell the smoke as well.
- He therefore did not stay in the rental unit any further nights and subsequently vacated completely by June 5, 2012.
- He believes that his security deposit and rent should be returned since he rented this unit as a non-smoking unit and it definitely had been smoked in.

In response to the tenant's testimony the landlord testified that:

- At the initial viewing the tenant did not inform her that he could smell smoke in the rental unit, and no mention of the smell of smoke was made until she got the phone call on May 30, 2012.

Analysis

It is my finding that that it's likely that this rental unit had been smoked in by a previous tenant. Even one of the counselors sent by the strata council stated that he could smell smoke in the rental unit.

Therefore it is my decision that, since the tenant had informed that landlords that he was allergic to cigarette smoke, this is a breach of a material term of the tenancy agreement and the tenant therefore had the right to end the tenancy on short notice.

The landlord testified that they have no knowledge of anyone ever having smoked in the rental unit, however even an unintentional breach of the tenancy agreement is still a breach.

Conclusion

This application is dismissed in full without leave to reapply, and have issued an order for the landlords to return the \$1275.00 to the tenant.

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: October 25, 2012.

Residential Tenancy Branch