



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes PSF, OLC and O

Introduction

This application was brought by the tenant seeking an order for provision of services or facilities removed unilaterally by the landlord and an order for landlord compliance with the legislation and rental agreement. At the core of this dispute is an initiative by the landlord to relocate the smoking area from the locally regulated three-meters from doorways to a gazebo further removed from the rental building.

As a preliminary matter, the applicant had requested that documentation on a previous incident not be considered. The parties agreed that it was of no consequence to the matter at hand and would not be taken into consideration.

Issue(s) to be Decided

This matter requires a decision on whether the landlord can unilaterally amend the rental agreement to relocate the smoking area.

Background and Evidence

The applicant in this matter represents a group of about 20 residents who smoke of the 80-resident seniors housing society building.

In his written submission and in a narrative read into the record, the applicant tenant recounted the relocation of the smoking areas to a single gazebo which, in addition to other shortcomings, created some difficulty for the less ambulatory residents.

I found particular significance in a written statement submitted by the tenant which said, "Had management and the Board made a statement of concern to our community, treated us with dignity and respect, and invited input, so much of this turmoil could have been avoided."

As the hearing progressed over 45 minutes, it became increasingly apparent that both parties were abundantly understanding of the needs of the other. The tenant statement expressed understanding of a previous change eliminating smoking indoors and the applicant tenant expressed his understanding of the landlord's obligation to ensure the quiet enjoyment of all tenants, including those who do not smoke.

However, the tenant was concerned that the complex' newsletter addressing the issue of smoking had vilified smokers and that some other residence perceived that as giving licence to act rudely or disrespectfully toward residents who smoker. In one incident, he said a non-smoker had knocked an ash tray being shared by two persons to the ground and ordered them to pick up its contents. In another an incident, a resident photographed a person smoking.

The officials representing the society concurred that the first incident was unacceptable and would have been sanctioned if the building manager had not been away at the time. They also did not condone the photograph incident. The landlords stated that it had not been the intention of the newsletter articles to create scapegoats of persons who smoke, and they believed that all residents deserved to be treated with respect.

I further note efforts by the landlords after the fact to refine the new smoking location in response to comments from the tenants. They have relocated that gazebo to an attractive part of the property, have added an outside area around it, have modified the structure, and have or plan to modify the walkway to it.

In brief, I found that both parties are reasonable and understanding of the others' position and there remains a strong possibility that they will be able to come to an accommodation.

Therefore, I proposed an adjournment to given the parties an opportunity to continue their efforts to resolve the dispute to which they agreed. The chairman proposed meeting with all interested residents but acquiesced with the tenant's suggestion that meeting with only residents who smoke would be more constructive.

Conclusion

This matter is adjourned to a time and date set out in the enclosed Notice of Hearing, and the applicant tenant should be prepared to verify that the respondent landlord has been served with the notice when the hearing reconvenes.

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 07, 2012.

Residential Tenancy Branch