



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bakonyi Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, OLC, FF

Introduction

This hearing concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which began in May 2002. Monthly rent is \$595.00 and a security deposit of \$267.50 was collected.

In his application the tenant describes the landlord's "overnight smoking" as a disturbance "ever since I've lived here and, in particular, the past month."

The landlord testified that the building within which the tenant's unit is located, is a 3 storey structure with a penthouse. Further, he testified that it is his wife about whom the tenant is complaining. The landlord stated that the tenant's unit is located on the ground floor, and that he and his wife live in a unit located on the next level up, although not immediately above the tenant's unit. The landlord also testified that with the exception of common areas where smoking is prohibited, residents are permitted to smoke in their own units and on their balconies and patios. As well, he testified that he and his wife have resided in this building for approximately 16 years, and that while his wife does not smoke within their unit, she does smoke on their patio. The landlord referred to the provincial *Tobacco Control Act*, and undertook to make the point that the

legislation prohibiting smoking does not apply to smoking in individual units, or balconies in apartments or condominiums.

Finally, the landlord testified that, given the physical / spatial distance between his patio and the tenant's unit, he knows of no way in which smoke from his patio could make its way to the tenant's unit, and he considers that the tenant's complaint is a reflection of the tenant's aggravation with a recent rent increase.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 28 of the Act speaks to **Protection of tenant's right to quiet enjoyment**, and provides in part as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(b) freedom from unreasonable disturbance;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I note that the landlord and his wife have resided in the building for approximately 5 years in excess of the tenant's nearly 11 year term of tenancy. Further, I note that while the tenant claims that the landlord's smoking has been problematic since the start of tenancy, his smoking related concerns appear to have come to the fore only very recently. Additionally, I note that the tenant has not alleged that smoking has taken place in any of the building's common areas where smoking is prohibited.

In summary, based on the documentary evidence and testimony, I find there is insufficient evidence that the landlord's smoking has breached the tenant's right to quiet enjoyment. Accordingly, the tenant's application is dismissed.

Conclusion

The tenant's application is hereby dismissed in its entirety.

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: March 12, 2013

Residential Tenancy Branch

