



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC

Introduction

This hearing dealt with an application by the tenant seeking an order to have the landlord comply with the Act, the regulation or tenancy agreement and a monetary order for money owed or compensation for damage or loss suffered under the Act, regulation or the tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant entitled to any of the above under the Act, the regulation or the tenancy agreement?

Background and Evidence

The tenancy began on or about 19 years ago. Rent in the amount of \$1121.00 is payable in advance on the first day of each month. The tenant resides in an apartment complex.

The tenant gave the following testimony:

The tenant stated that she has been disturbed on regular basis from the tenants that live above her. The tenant stated that it began in early May of 2013. The tenant stated that whenever she smokes in her bedroom the tenants above start to make noise by stamping their feet or slamming doors. The tenant stated that she has always smoked in her room and doesn't feel it's appropriate for the tenants above her to react and harass her in this way. The tenant notified the landlord verbally and in writing.

The landlords' agent gave the following testimony:

The resident manager has been working to resolve this issue between the parties. The agent stated that she and her associate have spoken to both parties and are trying to

find an amicable solution. The agent stated that the tenants' that live above the subject tenant have lived in the complex for thirty years. The agent stated that the issue the upstairs tenants have with the subject tenant is that two of the family members are battling cancer and find the actions of the subject tenant harassing as well.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the tenant must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

At the outset of the hearing the tenant stated that this is not about money and "I just want this to stop". I clarified with the tenant whether she was seeking a monetary order as compensation. The tenant advised that she was not and that she only put an amount because "that's what the people at the Branch told me to do". Based on the comments and wishes of the tenant, I dismiss the monetary portion of her claim.

I found both parties very willing to resolve this matter but are unsure as to how to do it. The tenant only seeks her privacy and quiet enjoyment. The landlord has made attempts to balance both parties interest. The landlord has had discussions with the tenant's that reside above the subject tenant and stated things have improved. In the tenants own testimony she also acknowledged and conceded that things have gotten better since the agent has had discussions with the other tenants.

Based on the testimony and evidence submitted for this hearing I find that the landlords are conducting their business in a reasonable and appropriate fashion. The tenant has not satisfied me of her claim as applied for and as a result I dismiss the tenants' application in its entirety.

The parties are encouraged to continue to having discussions to address their issues.

Conclusion

The tenant's application is dismissed.

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: June 25, 2013

Residential Tenancy Branch

