



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westcott Middlegate Rental Agency
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, O and FF

Introduction

This hearing addressed the tenant's application for an Order for landlord compliance with the legislation and/or rental agreement arising from the situating of new managers for the rental building in the suite below that of the applicant. The applicant claims the managers smoke and have a dog, contrary to established rules and rental agreements in the building. The tenant also sought to recover the filing fee for this proceeding.

During the hearing, the tenant advised that he accepts the landlord's explanation that the dog is a personal assistant animal in training and the managers are contractually obligated to continue with its training for six months. He stated has not been disturbed by the dog and had included it in the application to indicate a possible pattern of non-compliance. Therefore the hearing focussed on the smoking issue.

Issue(s) to be Decided

Is a formal order that the landlord comply with the non-smoking material term of the rental agreement an appropriate remedy for this dispute.

Background and Evidence

This tenancy began on March 1, 1997. Rent is approximately \$1,200 per month.

During the hearing, the tenant submitted into evidence a letter he had written to the landlord on June 5, 2013 in which he reports the matters in dispute and requests that the landlord enforce the applicable policies.

The office manager replied by letter dated June 20, 2013, received July 2, 2013, that the landlord makes it very clear to new managers that the building is non-smoking and gives assurance that the matter has been dealt with. The same letter explained, as previously noted, that the dog is not a pet but a personal assistance animal in training. The office manager explained that there was a short delay in mailing the letter as she had to wait to have it vetted by her superior who was away at the time.

The tenant also submitted into evidence a copy of a notice to tenants dated May 26, 2013 reminding them that, with the exception of some units in which smoking privileges were grandfathered, smoking was strictly prohibited and constituted a breach of a material term of the rental agreement. The same notice also cautioned that the bathroom exhaust fans were interconnected and smoke from one could emerge from another.

The applicant tenant stated that to avoid such odours, he had had to seal his own bathroom exhaust fan.

The female building manager attended the hearing and acknowledged that she and her husband had smoked on the balcony only when they first moved in to the rental unit as they were not aware that it was part of the prohibited area and they did not anticipate that smoking outdoors would disturb others.

She stated that they have since been corrected and continue to comply with the non-smoking policy, and she had switched to e-cigarettes in which the exhalation is mostly odourless water vapour. She stated that her husband no longer smokes on the property.

At the tenant's statement that he still smelled smoke, the landlord's representatives noted that the tenants across the hall from the applicant tenant had continued to smoke and were shortly to be vacating their rental unit.

Analysis

I accept the evidence of the office manager and the building manager that the non-compliance with respect to smoking has been remedied and I find that, under the circumstances, the landlord addressed the tenant's complaint in a reasonable time and manner.

Therefore, I do not find it necessary to issue an order for landlord compliance.

I concur with the officer manager's submission that the precise details of her communication with her staff is a private personnel matter and that she is not obliged to share those details with the applicant as he requested.

However, I do find merit in the application as the building manager did acknowledge that she and her husband had smoked on the balcony for a period.

Therefore, I find that the tenant is entitled to recover the filing fee for this proceeding from the landlord and, pursuant to section 72 of the *Act*, I hereby order that he may do so by withholding \$50 from the next due rent following receipt of this decision.

Conclusion

The tenant identified the presence of a personal assistant dog to be a non-issue as its presence in the managers' unit is temporary and the dog has not disturbed him.

I find that the smoking issue has been adequately addressed and that an order for compliance is not warranted under the circumstances.

The tenant is authorized to recover his filing fee for this proceeding by withholding \$50 from his next rent due.

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: July 24, 2013

Residential Tenancy Branch

