



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, O

Introduction

This was a hearing with respect to the tenant's application for a monetary order and for other relief. The hearing was conducted by conference call. The tenant and the landlord's representative called in and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is an apartment in Vancouver. The tenancy began in July, 2011. The tenant testified that he has complained to the landlord since 2012 about noxious fumes entering his rental unit. The tenant said that the fumes are created by tenants living below his unit who barbeque on their balconies. The tenant testified that he suffers from asthma and the fumes are a health hazard for him and he cannot open his windows at times due to the fumes.

The tenant wants the landlord to prohibit the use of barbeques and has requested compensation for loss of quiet enjoyment in the amount of \$4,806.00.

The landlord initially responded to the tenant's complaints by notifying offending occupants not to use barbeques, but later the landlord determined that barbeque usage had been allowed in the rental property and it decided that it was not in a position to prohibit occupants from the use of barbeques. According to the landlord's representative, the landlord is prepared to deal with occupants whose use their barbeques inconsiderately, but it is not prepared to enforce a building wide prohibition. The landlord has confirmed with the City that city bylaw permit the use of barbeques on balconies in concrete buildings. The landlord's tenancy agreements with existing tenants allow the use of barbeques.

Analysis

The tenant's concerns with the use of barbeques relate to the effect that of the fumes on his asthma condition. I accept the landlord's position that the use of barbeques is permitted under city bylaws and pursuant to tenancy agreements between the landlord and its tenants.

I find that it was up to the tenant, if his special circumstances made it imperative that no barbeques be used, to make inquiries of the landlord before renting the unit. The tenant made no such inquiries and lived in the building for approximately one year before making any complaint to the landlord about barbeque usage. The landlord is bound by the tenancy agreements it has signed with other tenants and it is not at liberty to unilaterally amend existing tenancy agreements to prohibit the use of barbeques. During the hearing the landlord's representative committed to work with the tenant to minimize the impact of barbeque use upon the tenant by ensuring that other tenants are considerate in their use. The landlord's representative and the tenant agreed to communicate about different way that the tenant's need could be accommodated.

Conclusion

Because barbeque use is a permitted activity on the balconies of the rental property, I am unable to require the landlord to prohibit their use. I find that the onus was on the tenant to make enquiries before he rented, if the matter was essential to his tenancy and the enjoyment of the rental unit. I find that the tenant is not entitled to an award for loss of quiet enjoyment. The tenant's application for a monetary award is dismissed without leave to reapply. This decision does not preclude the tenant from making a further application if another tenant is making excessive or inconsiderate use of a barbeque to the extent that the use is so unreasonable that it constitutes a nuisance.

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 15, 2013

Residential Tenancy Branch

