



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal Providence Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

This hearing dealt with an application by the tenant for an order that the landlord comply with the terms of the tenancy agreement. Although served with the tenant's Application for Dispute Resolution and Notice of Hearing sent by registered mail on October 19, 2013 the landlord did not attend the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to the requested order?

Background and Evidence

This tenancy began on August 1, 2013. The tenants are smokers and have been smoking cigarettes on their balcony. The landlord has advised the tenants that they are getting complaints about their smoking from other residents of the building. The tenant testified that when they were looking for a place to rent they specifically chose a place with a balcony so that they could smoke there. The tenant further testified that approximately half the other occupants of the building smoke on their balconies. The tenants provided photos of other tenants standing on their balconies smoking.

With respect to smoking, the tenancy agreement says the following: "Smoking of any kind is not permitted inside the suite or building as per the City of Vancouver Smoking By-Law 6.1(C)..." The landlord has also pointed out to the tenants that the City by-law requires them to be at least 6 meters from any air intake into the building.

Analysis

The tenants' application is based strictly on the terms of the tenancy agreement which states that smoking is not allowed inside the suite or building. The tenants' position is

that they are smoking outside and not inside the building. Whether the tenants are in fact smoking within 6 metres of an air intake location I do not know.

In any event, in the absence of an appearance by the landlord to explain their position, it seems to me that the tenants are within their rights under the tenancy agreement to smoke on their balcony. As a result, I agree that the tenants are entitled to an order that the landlord comply with the terms of the tenancy agreement and allow the tenants to smoke on their balcony.

Conclusion

I hereby order that the landlord comply with the terms of the tenancy agreement and allow the tenants to smoke on their balcony.

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: December 03, 2013

Residential Tenancy Branch

