



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Terra Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and for an Order for the landlord to comply with the *Act*.

The tenant, an agent for the tenant, and two of the agents for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?

Background and Evidence

The parties agree that this tenancy started on January 06, 1996. Rent for this unit is now \$415.00 per month and is due on the 1st day of each month.

The tenant's agent testifies that the tenant has been troubled with strong smells of incense or some other type of chemical smell filtering into the tenants unit. This causes headaches and nausea and started in November, 2013 when a new tenant took over the unit below. The tenant complained to the manager who came out to the tenant's unit and agreed there was smell in the unit. The manager went to talk to the tenant living in the unit below and that tenant denied that they were using anything with this strong smell and no odour could be smelt coming from that unit.

The tenant's agent testifies that the manager did put up notices around the building asking tenants not to use anything that has a strong smell. The tenant sent another letter to the landlord in mid January, 2014 and a member of the board JW contacted the tenant to see if the problem had been resolved. The tenant informed JW that the problem had not been resolved. The tenant's agent testifies that the tenant did not hear back from JW and he did not follow up on the tenants complaints so the tenant filed her application for this hearing.

In February, 2014 the new manager came to the tenants unit but said he could not smell anything however on that day the smell was faint. The tenant received a letter from the management who stated that the smell could be coming from outside the building as this is a built up area. However, the tenant was away from home for a week in March and all the windows were closed. The smell was again in the tenants unit and could therefore not be coming from outside the building.

The tenant's agent testifies that they conducted some research about the affects of chemical smells and this indicates that it is harmful for people with susceptibility to smell. Work Safe BC also recognises the harmful effects of chemical smells and perfumes and chemicals are banned in most work places.

The tenant requests some assistance from the landlord in getting this problem resolved. The tenant seeks an Order for the landlord to comply with the *Act* with regard to protecting the tenant's health and quiet enjoyment of the rental unit. The tenant also seeks compensation of \$2,075.00 which is an amount equivalent to five months rent since this problem started in November, 2013.

The landlord's agent RM testifies that after receiving the tenant's letter the building manager in position at that time did attend at the tenant's unit and agreed there was a smell that was something like a plug in air fresher. That manager went to the unit below to investigate and was allowed access to that tenant's unit but found there was no source of smell in that unit. The second time the tenant called the manager the manager attended the tenant's unit but again could not determine a source of the smell and suggested to the tenant that it may be coming from outside the building. In Mid January a contractor handyman also attended at the tenant's unit and he also investigated all adjoining units but could not determine a source of the smell as no other units had this problem. The landlord's agent testifies that this is a concrete building and smells do not transfer easily between units and the only spot for transfer would be the plumbing. However this does not appear to be the source of the odour.

The landlord's agent testifies that on February 13, 2014 the new resident manager went to the tenant's unit but could not smell anything at that time. This manager returned on February 14 and February 17 but could not detect any odours of perfume or any other fragrance. This manager also checked the other units.

The landlord's agent testifies that this building is in a highly populated area with many buildings located all around. This also creates a tunnel like wind affect. The landlord's agent suggests that this could be the source of the smell pervading the tenant's unit when the wind blows odours from the outside into the unit. The landlord's agent testifies that they have inspected thoroughly and carried out thorough investigations. The odour is intermittent and the odour changes.

The landlord's agent MF testifies that the board did receive a letter from the tenant and JW responded to the tenant. JW also asked the board and the management company to continue to follow up to try to resolve the tenants concerns. On the two occasions the managers have been to the tenant's unit they have also investigated the units on either side and below and have been able to enter those units without the required notice as the tenants residing there have given permission. This is a 12 story building and it is unlikely that any odours are coming from a floor further down as the unit below the tenants does not suffer with the same issues.

The landlord's agents testify that they are willing to offer the tenant another unit in the building if the tenant would be open to this move. The landlord's agents also testify that they will put up new notices concerning the use of scents and other strong chemicals around the building to remind other tenants that their neighbours may be sensitive to strong chemical odours.

The tenant's agent testifies that she has been in her mother's unit when the smell is present and it is so bad it makes her eyes water and causes sneezing. The manager has to investigate the smell when it is at its strongest. The tenant's agent testifies that her mother has lived in this unit for 18 years and does not want to move.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I find the landlords are doing what they can to investigate the odor in the tenant's unit. The landlords have responded to the tenant's complaints and concerns appropriately. It is often difficult for a landlord to gain entry to another tenant's unit to investigate a smell if that tenant is not at home at the time or refuses the landlord entry without proper 24 hours written notice. The landlords have however been able to access the adjoining units when the smell is present in the tenants unit but have found the source is not present in those other units.

If the odor is coming from an outside source then this is beyond the landlord's control. It is my decision that the landlords are complying with the *Act* in carrying out investigations and posting notices to inform other tenants about the use of strong smelling chemicals and in their response to the tenants concerns. The source of the Odor has not yet been determined; however, the landlords are continuing to investigate this to assist the tenants living conditions. The landlords have also offered the tenant an alternative unit in the building which the tenant has declined.

In the matter of compensation; in order for me to award a tenant compensation the tenant would have to show that the landlords were at fault in this matter. The tenant has insufficient evidence to meet the burden of proof that the landlords are at fault and therefore the tenants claim for compensation is dismissed.

If in the event the landlords do determine that the source of the smell is emanating from somewhere in the building and the landlords do not take steps to prevent this entering the tenant's unit the tenant is at liberty to reapply.

Conclusion

The tenant's application is dismissed with leave to reapply

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, 2014

Residential Tenancy Branch

