



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MacDonald Commercial Real Estate Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This was a hearing with respect to the tenants' application for a monetary order and an order directing the landlord to comply with the *Residential Tenancy Act*, Regulation or tenancy agreement. The hearing was conducted by conference call. The tenants and the landlord's representative called in and participated in the hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award and if so, in what amount?
Should the landlord be order to comply with the *Residential Tenancy Act*?

Background and Evidence

The rental unit is an apartment in Maple Ridge. The tenants claimed in their application that: "From day one the marijuana and cigarettes have been unbearable to a point of not being able to sleep in my bedroom for choking".

Although the tenants requested an order that the landlord comply with the Act, Regulation or Tenancy agreement, the tenancy has ended and they have moved out of the rental unit. The tenants claimed a monetary award in the amount of 11,580.00 made up of the following amounts:

- | | |
|--|------------|
| • Moving cost for tenant, J.Y to move to Prince George | \$2,500.00 |
| • Moving cost for tenant, V.H. to move to new location | \$1,000.00 |
| • Recover filing fee | \$50.00 |
| • Failure to give Enjoyment, security, and well being to J.Y. and V.H. over this past Year | \$6,000.0 |
| • Being prejudice against V.H. And J.Y. over our health issues and stating He wants us gone when our lease expires in November | \$2,030.00 |
| Total claim = \$11,580.00 | |

The tenancy began on December 1, 2013 for a one year fixed term and required the tenants to move out at the end of the term unless a written agreement was made for renewal term. The tenants moved in before December 1st and paid pro-rated rent for two weeks. The monthly rent was \$965.00

The tenants testified that because of their health problems it was important to them that they live in a smoke free environment. The tenants complained that they were affected throughout their tenancy by tobacco smoke, but to a much greater degree by marijuana smoke emanating from other units in the building that entered the tenants' unit. The tenants said that the landlord failed to resolve the problem and said that the difficulties they have experienced have forced them to move out of the rental unit and caused the break-up of their relationship. They claimed that they should be compensated in the amount of \$11,580.00, which is an amount equivalent to the rent paid over the one year term of the tenancy. The tenants did not submit any documents, receipts or invoices to establish any of the amounts claimed for moving expenses.

The landlord submitted documents, including a copy of the tenancy agreement, a record of communications and a chronology of events. The rental property is a two storey wood frame 12 unit apartment building. The landlord said that tenancies in the building that existed before the landlord's representative took over management of the property in October, 2013 do not restrict smoking inside the rental units. There are several tenants who smoke and who have lived in the building for years. The landlord's representative said that all tenancy agreements since October 15, 2013 have a no smoking clause that prohibits smoking inside the rental units and in hallways, but smoking on the balconies of the rental units is allowed.

The landlord's representative said that the tenant reported smelling marijuana in his suite and in the hallway on February 2nd, 2014. The landlord's representative testified that he investigated the tenant's complaints and could not verify the smell of marijuana in the building. The landlord suggested that the tenant call the RCMP if he noticed further incidents of marijuana use. The landlord had the telephone entry system for the building repaired so as to allow the tenant to admit the police anonymously if they were called to forestall the tenant's concerns about retaliation. The landlord also had an investigator check the building with a detection dog to determine if drug use could be confirmed. There was a report of suspected marijuana use from a particular unit. The landlord later learned that the occupant had a government permit authorizing the possession of marijuana for medical purposes, but despite that fact the landlord issued a Notice to End Tenancy to the occupant and at a dispute resolution hearing they agreed to end their tenancy on April 30, 2014. The tenant continued to complain of marijuana use in the building after this tenancy ended. The landlord was unable to confirm any of these complaints. The landlord's representative noted that other tenants

who are smoking tobacco are not violating the term of their tenancy agreements and the landlord does not have grounds to evict them. He said there is insufficient evidence to evict any other tenant for illegal activity.

Analysis

The tenants have complained that their pre-existing health conditions make it imperative that they not be subjected to second hand smoke and particularly marijuana smoke. The tenants elected to move into the rental unit without making the landlord aware of their requirement for a smoke free environment. The landlord acted to evict a tenant using marijuana and has taken active steps to investigate the tenant's complaints and prevent the use of marijuana in the rental property, but the landlord does not have the right to prohibit all occupants in the rental property from smoking.

I find that it was up to the tenants, if their special circumstances made it imperative that they have no exposure to smoke, to make inquiries of the landlord before renting the unit. The tenants made no such inquiries and lived in the building for several months before making any complaint to the landlord about smoking or marijuana 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 all smoking, whether in the units or in later tenancies on the balconies.

The tenants have moved out; they have claimed what amounts to a refund of all rent paid for the duration of their tenancy. The tenants have provided no documentary evidence to establish any actual expenses for moving or for any other expenditure. I find that the tenants' have not established that they are entitled to an award of compensation from the landlord in any amount.

Conclusion

The tenants' application for dispute resolution is dismissed without 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: November 20, 2014

Residential Tenancy Branch

