



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAROL ENTERPRISES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, RP, RR, FF

Introduction

This hearing was convened as the result of the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenants applied for a monetary order for money owed or compensation for damage or loss, for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, an order requiring the landlord to make repairs to the rental unit, for an order allowing a reduction in rent, and for recovery of the filing fee paid for this application.

The tenants and the landlord's representatives attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-It is noted that the tenants requested an adjournment of the hearing, and failing that, permission to withdraw their application. The landlord's agents objected to both the adjournment and the withdrawal, as they were ready to proceed with the hearing. As a result, I declined to adjourn the hearing or allow the withdrawal of their application.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation and orders for the landlord?

Background and Evidence

This tenancy began August 1, 2013 and monthly rent is \$2050. The rental unit is located in a 6 rental unit townhome building, all owned by the landlord.

The tenants' application arises from their contention that they are experiencing the smells and negative effects of cigarette smoke coming from an adjoining rental property, which was not noticed at first for about 13 months, but now that the female tenant is working from home, is quite noticeable.

The tenants submitted that they asked the landlord's agent at the time they were looking into and considering renting the rental unit, and were told by the landlord's agent that the rental unit and the residential property were non-smoking. The tenants submitted that their neighbour is smoking, causing the tenants to suffer from the ill effects of second hand smoke, to the detriment of their health. The tenants submitted they believed there was a clause in their tenancy agreement when it was signed that the rental unit and residential property were non-smoking.

The tenants submitted that the landlord should be required to provide a non-smoking rental unit and building, as it was misrepresented to them that the premises were non-smoking.

As to their monetary claim, the tenants submitted that they are entitled to compensation as they have suffered a loss of income as the female tenant works from home, that they have not lived in a peaceful environment, and that their neighbours are habitual smokers, resulting in a detrimental effect on their health.

Landlord's response-

The landlord submitted that when the tenants first complained of cigarette smoking, they attempted to work out a solution with the tenants' neighbour as a matter of courtesy; however, according to the landlord, that neighbour has a right to smoke in his home as the building and residential property were not advertised to be non-smoking. The landlord submitted the contents of the advertisement.

The landlord submitted further that the 6 townhomes in the residential property are separate, with their own wall system, heating system, all ducts and vents are separate, and that venting is to the outside. The landlord submitted further that there is no air transference between the townhomes, due to the construction, and that the only time the tenants would smell cigarette smoke was if the windows are open.

The landlord's agent submitted further that they have been inside the rental unit and have not smelled any cigarette smoke, even though they confirmed the neighbour was home and smoking a cigar at the time.

Analysis

I have reviewed the relevant evidence of the parties, and find as follows:

An order requiring the landlord to comply with the Act, or tenancy agreement; an order requiring the landlord to make repairs to the rental unit-

I find the tenants submitted insufficient evidence to support their request that the landlord be ordered to comply with the Act or tenancy agreement. The tenants' claim arises from their contention that the residential property, comprised of 6 townhomes, was non-smoking. The tenants have not submitted any evidence that this was the case, as there was no such term in the tenancy agreement, a copy of the advertisement, or other documents, and therefore, the landlord was not contractually obligated to provide a non-smoking unit. I agree with the landlord's assessment that the other tenant's smoking in his rental unit cannot be regulated as demanded by the tenants.

I therefore find the tenants have submitted insufficient evidence to show that the landlord was not in compliance with the Act or tenancy agreement. The tenants further confirmed that there were no repairs that they requested.

A monetary order for money owed or compensation for damage or loss; for an order allowing a reduction in rent-

As I have found the tenants submitted insufficient evidence that the landlord has not complied with the Act or tenancy agreement, I further find that they are not entitled to monetary compensation or a reduction in rent.

Due to the above, I dismiss the tenants' application, without leave to reapply.

Conclusion

The tenants' application is dismissed.

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: January 30, 2015

Residential Tenancy Branch

