



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This was a hearing with respect to an application brought by the tenants for unspecified relief. The hearing was conducted by conference call. The tenant and his representative participated in the hearing. The landlord called in and responded to the tenants' submissions.

Issue(s) to be Decided

Are the tenants entitled to some form of remedy related to their concerns about cigarette smoke at the rental property?

Background and Evidence

The rental unit is the upper suite in a house in Pitt Meadows. The tenancy began on December 15, 2014 with monthly rent of \$1,400.00 payable on the 15th of each month. The tenants paid a security deposit of \$700.00 prior to the commencement of the tenancy.

The tenants are husband and wife. They do not smoke. According to her husband, the female tenant has breathing problems and her health is seriously affected by cigarette smoke. The tenant referred to the internet advertisement to which they responded when they agreed to rent the suite. The advertisement contained the words "no smoking". The tenant said that he interpreted this to mean that the rental property was a non-smoking house. The tenant said that when they viewed the rental unit they were not told that the downstairs tenants were smokers and had they known they would not have agreed to rent the house.

The tenant said that he learned that the downstairs tenants smoked when they moved into the house on December 17th and noticed a container with cigarette butts outside

under the rear deck. The tenant said that the downstairs tenants smoked outside, but it was not a significant issue because it was cool outside and the windows were closed. The tenant said that problems began in January when he approached the downstairs tenant and proposed that he assist in creating a protected smoking area away from the house. He said that the downstairs tenant rebuffed his proposal and told him that they already have a smoking area and intended to continue using it.

The tenant said that his wife developed more severe breathing problems. He said that medical tests revealed that she is allergic to cigarette smoke and even slight traces of smoke affect her breathing.

In April, in response to the tenants' complaints, the landlord constructed a covered smoking area for the downstairs tenants that is located some distance away from the house.

The tenant said that the smoking area has not solved the problem and the tenants' smoking still affects his wife. The tenant also complained that the downstairs tenants are hostile and uncommunicative.

The landlords testified that they have acted promptly and properly in response to the tenants' complaints about smoking. The landlord's position is that the rental units were advertised and rented on the basis that there was no smoking permitted in the house itself. The landlord said that the tenant never enquired whether the rental property was a 100% non-smoking property before entering the tenancy agreement. The landlord testified that the downstairs tenancy began several years before the upstairs tenants moved in and the downstairs tenants are not prohibited by their tenancy agreement from smoking outside the rental unit. The landlord testified that he does not have grounds to evict the downstairs tenants and he submitted that if it was imperative to the tenants that they live in a 100% smoke free property, they should have alerted the landlord to their requirements before entering into the tenancy agreement. The landlord submitted that the comment "no smoking" in an internet advertisement did not amount to a declaration that there would be no smoking permitted anywhere on the rental property.

Analysis

The tenants object to the fact that the downstairs tenants smoke on the rental property and they are not satisfied with the landlord's steps to ameliorate the problem by creating

a smoking area away from the house. The tenants have not claimed any specific relief in their application. They claimed a remedy of “other” and said in their application: “We would like to stay, but the smoking has to stop.”

In the tenants’ materials and at the hearing, the tenant suggested that the downstairs tenants should be evicted. The tenant also suggested that the landlord should pay for the tenants’ moving costs.

The tenants have not claimed an explicit remedy. I find that the terms of the tenancy agreement did not guarantee that the entire rental property would be smoke-free and there is no basis for me to make orders that the landlord should take steps to evict the downstairs tenants or compensate the applicants for expenses they may incur to move from the rental unit. I find that the onus was on the tenants to make enquiries before they rented if the matter of an entirely smoke free property was essential to their tenancy and the enjoyment of the rental unit.

Conclusion

The tenants’ application 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: October 09, 2015

Residential Tenancy Branch

