



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUNTLEY INVESTMENTS AND DORSET REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, RP, RR

Introduction

The tenants apply for an order to alleviate the entry of cigarette smoke into their apartment from the rental unit below and for a rent reduction.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the landlord has breached an obligation owed to the tenants? If so, does the breach warrant that compliance or repair order or a rent reduction?

Background and Evidence

The rental unit is a three bedroom apartment in a thirty nine unit apartment building. The building is a very old one; built in 1909.

This tenancy started in March 2015 for a fixed term to April 30, 2016. The monthly rent is \$1750.00. The landlord holds an \$875.00 security deposit.

The tenant Ms. R. testifies that the tenancy agreement prohibits smoking in the apartment and that the building is a non-smoking building.

She says that the apartment had been freshly painted prior to move in and that there was no hint of cigarette smoke or smell. She says that within a few days after the start of the tenancy

she discerned a strong smell of cigarette smoke. She told the landlord's representative Mr. S.H., who revealed to her that the tenant living below her apartment was a smoker. Since that lower tenant had been living in the apartment building for so many years, she had been "grandfathered" and allowed to continue smoking.

Mr. S.H. told her that the tenant below had a filter of some kind to eliminate the smoke and so if Ms. R. was sensing it then maybe the filter was not working.

Ms. R. says that the use of the filter by the lower tenant helps a great deal but there is still smoke entering the guest room and, to a lesser extent, Ms. M.'s bedroom. The guest room is, apparently, the room directly above that portion of the apartment below in which the tenant below smokes.

On August 25th the tenants wrote to the landlord with a "notice to repair" because the cigarette smoke was coming into the apartment through the floor and the chimney. She says she heard nothing back from the landlord. No one came to investigate her complaint.

She is aware that the landlord has been in communication with the tenant below and she says that there is no smoke now. However, the guest room is suffused with the smell of cigarette smoke and it permeates any clothing stored there. She wants the guest room and Ms. M.'s room cleaned and repainted.

The tenant Ms. M. testified that the third room, the guest room, is the worst. She says her room is musty though she thinks the lower tenant has now stopped smoking.

Mr. K.S. for the landlord confirms that the apartment building is a "no smoking" building. He describes the communications between the landlord and the tenant below.

Mr. B.W. for the landlord says the building is "mostly non-smoking." He says the lower tenant has been issued an eviction notice. He describes remediation steps taken, such as adding weather stripping to doors.

Analysis

The tenants rented a unit in which smoking was not permitted. It was reasonable for them to conclude that they would not have to suffer the smell of cigarette smoke in their apartment coming from elsewhere in the building.

They gave the landlord fair notice in March 2015 that they were being disturbed by cigarette smoke coming from the apartment below. The landlord has, since this application was brought in mid October, taken steps to eradicate the problem and it appears that those steps have been successful in abating the nuisance of the smoke.

The tenants are left with a guest room that has been permeated with cigarette smoke. I accept the evidence that clothing cannot be stored in that room without acquiring the smell of cigarette smoke.

I find that the tenants are entitled to have the guest room walls and ceiling thoroughly and professionally cleaned. I am not persuaded that the room needs to be repainted in order to eradicate the cigarette smell. Nor am I persuaded that Ms. M.'s room requires similar treatment.

I find that the tenants are entitled to a rent reduction until the cleaning has been completed.

I order that the landlord attend to the professional cleaning of the walls and ceiling of the guest room in this rental unit. I direct that the work be completed and the room restored to a useable state by January 31, 2016.

I order that tenants' rent for the month of January 2016 be reduced from \$1750.00 to \$1500.00.

I order that if the work has not been completed and the room restored by January 31, 2016 the rent will continue at the reduced rent of \$1500.00 per month until the first of the month following the day the guest room has been cleaned and restored.

Conclusion

The tenants' application is allowed. There is no claim for recovery of a filing fee.

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 08, 2015

Residential Tenancy Branch

