



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Greater Victoria Housing Soc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by the tenant and three agents for the landlord.

During the hearing the landlords referred to "rules and regulations" that they have posted in one of the common areas for all tenants. I ordered the landlord to provide a copy of this document to both the tenant and myself. The landlord submitted a document entitled "Generic – House Rules".

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to declare the residential property to be smoke-free; to enforce regional district; Worksafe BC regulations; the landlord's own common area smoking policy; pursuant to Section 32 of the *Act*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on October 14, 2009 for a month to month tenancy beginning on November 1, 2009 for a market rent of \$41.00 per month due on the 1st of each month with a security deposit of \$205.00 paid.

The tenant submitted that she has medical conditions that are exacerbated when exposed to smoke. She submitted that when she moved into the rental unit she assumed that the building was smoke free because it was a government building. She believed that the smokers that were in the building were "grandparented".

The tenant complained that smoke infiltrates her rental unit from smokers in other rental units through open windows and when they are closed through other areas. She stated

that she cannot use her exhaust fan because it will pull in smoke from a neighbouring unit.

The tenant also submitted several complaints regarding smoking elsewhere on the residential property such as common areas that the landlord has designated as no smoking such as the rooftop deck; parking areas; and directly outside of the exterior doors of the property.

The landlord submitted that the property has never been designated non-smoking, however, they have named several common areas as non-smoking. The landlord stated that they do not have full time, on-site staff and rely upon reports for non-compliance to be made aware of any infractions of their common area policies.

The landlord's posted smoking policy states: "Smoking is not permitted in any of the interior common areas or within 7(seven) meters of entrances, windows or air intakes. All government bylaws and regulations also apply."

The landlord submitted that they are bound by the local Regional District smoking bylaws that require no smoking within 7 metres of opening doors and/or windows. The landlord submitted that should a tenant wish to complain about a breach of these bylaws they must be reported to the Regional District.

The landlord testified that they are also governed by Worksafe BC in terms of their requirements in relation to smoking and exposure to their employees. However, the landlord submits these rules do not apply residents of the property.

The landlord submits that when they were made aware of the tenant's health problems and after one of her neighbouring units became available for a new tenant they entered into the first non-smoking tenancy agreement for this residential property.

The landlord has submitted a copy of a tenancy agreement for the next door unit beginning on October 1, 2015 which contains the following clause: "Smoking. The tenant agrees to the following material term regarding smoking: No smoking of any combustible material is permitted on the residential property, including within the rental unit."

The landlord submits that they are considering, in the future changing the first floor of this property to a non-smoking floor by entering into only non-smoking tenancy agreements as current tenancies end and new tenants move in.

While the tenant did submit an amendment to her Application to include wishing "to dispute some of their evidence as ongoing harassment" the tenant did not present any oral testimony to the hearing regarding this complaint. The tenant had submitted a number of items including correspondence between herself and the landlord over the course of this tenancy.

Analysis

Section 32 of the *Act* states a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 32 allows for an arbitrator to order a landlord to maintain a residential property to comply with health, safety and housing standards required by law. For example, if there were evidence before me that the local municipal government required a property to be designated to be non-smoking and the landlord failed to do so then an arbitrator could order the landlord to comply with the local bylaw.

However, in there is no provision in the *Act* that will allow an arbitrator to designate a property to be a non-smoking residential property. As the tenant has provided no evidence of any such local, provincial or federal laws that would require this property to be designated as no smoking I find that I cannot order the property to be designated as such.

In regard to the bylaws that may apply to this tenancy, including the Regional District Rules and Worksafe BC, the landlord has provided an explanation as to whether or not the rules apply and/or the mechanism for complaints. That is, for Regional District bylaws the tenant must report them to the local District authority. Likewise, issues of smoking related problems government by Worksafe BC must be dealt with by Worksafe BC.

While I acknowledge that the landlord has designated some common areas to be non-smoking I note that there is no promise or obligation outlined in the tenancy agreement signed by both of these parties that requires the landlord to provide any areas that are non-smoking.

As a result, I find the landlord, by providing some areas for enjoyment of all tenants that they ask residents not to smoke in and by the landlord starting a practice of new tenancy agreements, particularly next door to the tenant, that will move towards a non-smoking floor the landlord is exceeding their obligations under the *Act*, regulation and tenancy agreement.

From only the tenant's written submissions I note that I see no pattern of harassment in regard to issues during this tenancy. I see that the landlord has identified some issues that they felt were infractions on the tenant fulfilling her obligations as a tenant such as health and safety issues regarding her pet bird and leaving fire doors open. I find that it is the landlord's obligation to pursue matters that they feel are contrary to the obligations of any tenant, pursuant to their tenancy agreement. I find, based on these submissions from the tenant, that the landlord is only fulfilling their role as landlord.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

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 25, 2016

Residential Tenancy Branch

