



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, OLC, PSF

Introduction

This is an application brought by the tenant(s) requesting an order that the landlord comply with the act, regulation, or tenancy agreement, an order that the landlord provide services or facilities required by law, a monetary order in the amount of \$4500.00, and recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Preliminary matter

At the beginning of the conference call, legal counsel for the landlord stated that they believe that the respondent has been incorrectly named, as he is the manager of the property, but is not the owner, and they believe the owner should be named.

In response, the applicant stated that the party they have named is the person whom they have always dealt with, and is the person who accepts the rent.

It is my finding that the person named as the respondent on the application does fall under the definition of landlord in section 1 of the Residential Tenancy Act which states:

landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

It is my decision therefore to proceed with this hearing with the party who has been named, as the respondent.

Issue(s) to be Decided

The issues are whether the landlord has failed to comply with the act or the tenancy agreement and whether or not the applicants have established a monetary claim against the respondent.

Background and Evidence

Parties agree that this tenancy began on July 1, 2011 and that the monthly rent is presently \$1630.00 due on the first of each month.

The applicant testified that they moved into this rental unit approximately 6 years ago and on their addendum to the tenancy agreement it states that it is a no smoking property.

The applicant further testified that everything was fine for the first four and a half years, however, one and a half years ago the property sold, and they have paid rent to the respondent since then.

Applicants further testified that in early 2016, the landlord rented the suite below them to two tenants who smoke in the rental unit, smoked marijuana in the rental unit, and are loud partiers, often keeping them awake till late at night. She further states that as a result they are suffering from sleep deprivation and an irritation of their asthma.

The applicants further testified that this has been extremely stressful, as the landlord is not dealing with the issue, and it will also be a financial stress, as many of their belongings will have to be either cleaned or thrown out, to get rid of the excessive smoke smell that has permeated the items.

The applicants further stated that, even after numerous complaints, the landlords have failed to evict the other tenants, and the partying, smoking of marijuana, and cigarette smoking is still going on.

The applicant further testified that the landlord had informed them in a previous e-mail that the other tenants lease was about to expire and he was not going to extend the lease which would have been the perfect opportunity to get rid of these noncompliant tenants, however the landlord instead did renew the lease for the tenants.

The applicant further stated that the landlord has also now rented the other vacant suite that was below them to friends of the noncompliant people in the suite below, and as a result matters have gotten even worse.

The applicant further testified that the landlord is ignoring their complaints, and, although he says he is acted quickly and responsibly, he has not, as he ignores phone calls or fails to respond within a reasonable timeframe, and now, on top of all this, they received a Notice to End Tenancy for demolition of the property.

The applicants are therefore requesting an order that the landlord comply with the Residential Tenancy Act and provide quiet enjoyment of the rental unit, and are also requesting compensation in the amount of \$4500.00 for loss of use and enjoyment.

Landlord testified that they purchased this property in October of 2014 and the tenants about which the applicants are complaining moved into the rental unit in March of 2016.

The landlord further testified that he has taken the complaints from the applicant seriously and has made attempts to verify their allegations but has been unable to do so.

The landlord further testified that there are 6 units in this rental property and he has had no complaints from any of the other tenants about smoke or noise, not even from tenants in suites adjoining the suite about which the applicants have complained.

The landlord further testified that he has responded within a reasonable timeframe to the complaints from the applicants, and has even made two visits to the rental property at midnight to investigate the claims from the tenants, and on neither of those occasions was he able to find any indication of smoking or excessive noise. He also denies ever intentionally ignoring phone calls from the applicants.

The landlord further testified that he has even spoken to the tenants in the rental unit below the applicant suite, and they deny smoking or making excessive noise, and had threatened to sue him if he evicted them without cause.

The landlord further testified that he's been told by others in the building that smoke comes from people smoking in the adjoining building.

The landlord further testified that this is not a non-smoking building, however three of the units in the building are rented out as non-smoking units and three are not.

The landlord's legal counsel further argued that in the correspondence provided it shows that whenever the landlord received a complaint he replied to that complaint within a reasonable timeframe.

The landlord further testified that he attempted to arrange a meeting including himself, the applicants, and the alleged offending tenants; however the applicant declined that request.

The landlord therefore fails to see what more he can do to try and resolve these issues and requests that the applicants claim be dismissed.

In response to the landlords testimony the tenant testified that the reason there were no complaints from adjoining suites is that during most of the tenancy the adjoining suites were unoccupied, and then one was rented out to friends of the people in the offending suite and therefore, they are unlikely to file any complaints against their friends.

Further in response, the tenant pointed out that she has supplied witness letters from people who have witnessed the tenants in the offending suite smoking and causing excessive noise, including the witness letters from other tenants in this building.

The applicant further testified that they did not feel safe meeting with the landlord and all the other tenants from the other rental unit considering the way those tenants had been acting.

Analysis

It is my finding that the applicants have not met the burden of proving their claims that the landlord is failing to deal with alleged unruly tenants living in the suite below them.

The tenants claim that the landlord does not respond within a reasonable timeframe after they file complaints, however even the evidence provided by the tenant shows that the landlord, on most occasions, replies to their e-mails shortly after they file their complaint.

The tenant's claim they have made numerous calls to the landlord which have gone unanswered; however they provided no evidence in support of those claims, and the landlord denies intentionally ignoring calls from the tenant.

Further, none of the witness letters provided by the applicants have been signed and therefore carry very little weight.

The landlord however has provided a signed a witness letter from the tenants in the other rental suite, in which they deny smoking or making loud music, and in which they also declare that they will not smoke inside the unit or in the area of the building, and will not make loud music. This indicates to me that the landlord has taken steps to try and resolve the applicant's issues.

Further, although the applicants claim that the addendum to the tenancy agreement states that this is a non-smoking building, what it actually states is "*No smoking or any illegal drugs on premises*", and it is not clear whether that refers to the tenant's premises or the whole building. The landlord has testified that only three of the units in this rental property have a no smoking clause.

In this situation it is my finding that the landlord is in a very difficult position as he has to balance the information he has received from the applicants, with the contradictory information he received from the other tenants about whom the applicants are complaining, and in the absence of any strong evidence one way or the other, it would not be reasonable for the landlord to take action against the tenants in the unit below the applicant suite.

Further, although the applicants claim that the landlord could have resolved the issue by simply not renewing the other tenants lease when it expired, unless it was a fixed term tenancy that required the tenants to vacate, the landlord would still be required to serve a Notice to End Tenancy, and would need reasonable grounds to do so.

It is my decision therefore that there is insufficient evidence for me to issue any orders against the landlord for compliance or compensation.

Conclusion

This application is dismissed in full, 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: December 14, 2016

Residential Tenancy Branch