



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KANDOLA VENTURES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC

Introduction

The tenant applies for a monetary award and a compliance order claiming that the landlord has failed to take steps to eradicate a noxious smell emanating from the rental unit above hers.

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.

The application was brought only against Ms. F. It is apparent that the tenant's lawful landlord is K.V. Inc.. The style of cause was amended accordingly, by agreement.

Issue(s) to be Decided

Is the tenant being disturbed by noxious odours from another apartment? If so, has the landlord been adequately notified and has it taken reasonable steps in the circumstances?

Background and Evidence

The rental unit is a one bedroom apartment in a sixty nine unit apartment building.

The tenancy started in December 2016 for a fixed term ending November 30, 2017. The tenancy agreement requires that the tenant vacate the rental unit at the end of the fixed term. The parties have not entered into a new tenancy agreement.

The rent is \$850.00 per month. The landlord holds a \$425.00 security deposit.

The tenant testifies that prior to May 2017 the occupants of the rental unit above her, unit 204, a couple in their 50's, had been manufacturing and using drugs, especially around "welfare day." The odour would seep into her unit and cause her distress. She is a senior in poor health and has a tender bronchial system. She says she approached the man in 204 but he appeared violent. She says Ms. F. evicted them in May.

The tenant says that the new tenants in 204 have been smoking marijuana on their balcony. That smell does not bother her particularly. However, she says, the tenants in 204 are consuming much harder drugs during the night. It started in early June. It occurs virtually every night.

She describes the odour as being very oppressive; hampering her breathing. It drives her out of her unit in the middle of the night. She submitted digital evidence showing her travelling along streets and sidewalks in the dark in her motorized wheelchair. She says she has tried to sleep on her balcony but it is at ground level and there are "critters" out at night that cause her concern.

She says she had approached the male tenant in 204. He neither agreed or disagreed he was using hard drugs. She asked him to not consume them during the night and he agreed but he only stopped for a day or two and then the noxious odour resumed. She says he was mad that his sister was "using again."

The tenant says she gave the landlord a written complaint on August 17, 2017 and had been verbally complaining before that in June and July. She says that Ms. F. only responded that the people in 204 did not use drugs or were using them out in the parking lot.

She knows that two other suites have complained about the smell.

She says she has tried to contact the landlord in the night when the smell is in her unit but there is no answer and no emergency number. She says she has called the police but they never attend, though they've told her they have received many complaints from that building. She says she can smell the odour of drugs during the day sometimes.

Ms. W. is a friend of the tenant's. She has been in the tenant's apartment 33 times when the "smell of drugs" was noticeable between 1:00 a.m. and 6:00 a.m. She thinks the smell is crack cocaine; a very strong chemical smell. It comes through the registers. She says the tenant has to open all her windows. The apartment "reeks."

She checks on the tenant and sometimes the tenant stays with her on weekends.

For the landlord, Ms. F. denies the allegations. She lives on the third floor of the building. She attended "some months ago" at the tenant's rental unit to investigate the complaint of smells. She smelled nothing. The tenant said she smelled a little bit of the odour but that the tenants above must know Ms. F. was there.

Ms F. states that the tenants in 204 were a couple who worked full time and did not do drugs. She says they moved out September 24 or 25 with new tenants moving in October 17 or 18 and even during that vacancy period the tenant complained about the smell of drugs from the apartment. She says the applicant tenant kept going up to 204 and bothering them while they lived there.

M.s McL. testifies that she has lived on the third floor of the building for eleven years. She confirms that 204 was vacant for two weeks in October. She heard the applicant tenant complaining in a hallway but was unsure whether it was at the time that 204 was vacant.

Mr. G. testifies that he is the former tenant in 204. He moved out at the end of April 2017. He had lived there with his wife and her son. He says the tenant was constantly complaining about smells from his apartment. He says he does not smoke pot nor cook odoriferous food. He says that everyday there would be a complaint about either smoking drugs, moving furniture or burning something. He tried to accommodate her by minimizing noise. His wife is a registered nurse. They ceased all noise after 10:00 p.m. He says that one time he sent his wife's son to the tenant's apartment to confirm a noise complaint about motor noises. The son heard nothing. He denies he operated a "methadone lab" and alludes he has a background in law enforcement.

Mr. G. says that he contacted the RCMP about the tenant and was told she is psychotic.

In response the tenant says she has had three psychiatric evaluations and is not "deranged."

Analysis

There is a regrettable absence of any documentation from the landlord recording the receipt of complaints and action taken to investigate them.

Nevertheless, the determination of this dispute ultimately depends on the credibility of the parties. In this case the evidence given by the landlord and the tenant is not reconcilable without determining that one side is more credible than the other.

All parties gave their evidence in a straightforward and believable manner. I can find no ground to prefer the evidence of the tenant and her witness over that of the landlord's representative Ms. F. and her two witnesses. I consider it extraordinary that if the tenant was not being forced out by the odour she would spend her nights on the street in her motorized wheelchair, as is amply demonstrated by the digital evidence she provided. On the other hand, Ms. F.'s testimony was uncontradicted that months ago she attended at the tenant's rental unit in response to an odour complaint and could smell nothing.

Ultimately, the burden of proof lies with the complainant, the tenant in this case. I find that she has not proved on a balance of probabilities that she was suffering from noxious odours emanating from anywhere in the apartment building or that the landlord failed to take reasonable steps to investigate and abate the problem.

Conclusion

The tenant's application must be 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: December 03, 2017

Residential Tenancy Branch