



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MARTELLO TOWER and 260 SEABRIGHT HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, FF

Introduction

The tenants apply for a rent reduction claiming that their neighbouring tenant is affecting the quiet enjoyment of their rental unit by smoking in her apartment.

The tenants named the apartment block as the respondent. All agree that the landlord is the limited corporation S.H. Ltd. and so the style of cause has been amended to add the limited corporation as a respondent, by consent.

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

Has the landlord breached an obligation it owes to the tenants, either under the tenancy agreement or the *Residential Tenancy Act* and if so, what damages, if any, are reasonable in the circumstances?

Background and Evidence

The rental unit is a one bedroom apartment in a 30 floor apartment building.

Neither side produced a written tenancy agreement. It is agreed this tenancy started in 1988. The current monthly rent is about \$1246.00. The landlord holds a security deposit but neither party could say how much it is.

Since 1988 or perhaps 1989, the tenants have lived beside their neighbour Ms. B. She is a tobacco smoker and smokes in her apartment.

The tenant Mr. T. testifies that he can smell the smoke coming from her apartment from under Ms. B.'s hallway door. When the wind is in the other direction and Ms. B. leaves her balcony door open, he can smell the smoke coming around to his balcony, located adjacent to hers.

Mr. T. says he and Ms. T. are allergic to smoke. He is home most all the time because he is disabled as a result of a visual impairment and so is exposed to the smoke more than others, who would be away during the day.

He says it has been that way in the apartment since the start. Back in 1988 there were no "non-smoking" apartment buildings that he could have rented a unit in..

In May 2017 the landlord placed posters in the hallway stating that the apartment building was a non-smoking building and that smoking was not permitted anywhere inside the building, including the units, stairwells or balconies.

For the landlord, Ms. C. testifies that the new non-smoking rule only applied to new tenants and that old ones were grandfathered to permit them to continue smoking. She says that all new tenancy agreements prohibit tenants from smoking.

The landlord issued a one month Notice to End Tenancy to Ms. B. claiming that she was unreasonably disturbing or significantly interfering with other tenants because of her smoking. Ms. B. challenged that Notice and it was set aside by an arbitrator at a hearing held November 23, 2017.

Analysis

The only thing that has changed since this tenancy started in 1988 is that the landlord put up the posters in May 2017.

It is not part of the tenants' tenancy agreement that the building is a non-smoking building. They did not bargain or give consideration for the landlord to declare the building a non-smoking building. While the tenants will receive the benefit of the non-smoking posters, they cannot rely on the posters as grounds to argue that they are entitled to a non-smoking building or that Ms. B. must stop smoking in her rental unit..

Nevertheless, a landlord will be responsible to abate nuisances created by other tenants once the landlord has been given notice and been given an opportunity to investigate the complaint. If action is warranted and the landlord fails to take that action, it could be responsible.

In this case the landlord has investigated and has taken action by issuing the Notice to End Tenancy against Ms. B. and by attending the earlier hearing and defend the Notice, which, I understand, included Mr. T. giving evidence. I find that the landlord has taken reasonable steps to deal with the tenants' complaint and is not responsible for the arbitration result.

Conclusion

The tenants' 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 07, 2017

Residential Tenancy Branch