



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to have an order that the landlord comply with the Act.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions. The tenant indicated that they were missing from their package phone records. The tenant stated the landlord told them that they were not provided to the tenant as they disclosed information that was a privacy issue.

As the phone records were not provided to the tenant, I find it appropriate to exclude those from the hearing.

Issue to be Decided

Should the landlord be ordered to comply with the Act?

Background and Evidence

The tenancy began January 1, 2018. Rent in the amount of \$900.00 is payable on the first of each month. The tenant paid a security deposit of \$450.00.

The tenant testified that since they moved into the rental unit there has only been 7 days that they have not been impacted by the offensive smell of crack cocaine. The tenant stated that they know it is crack cocaine because their daughter told them so, and she was a drug user and they use to manufacture the substance.

The tenant testified that the smell starts between 12:30am to 6:30am. The tenant stated that it is always a day or two before “welfare payday” that the smell stops, likely due to the drug users running out of drugs and having no money.

The tenant testified that they told the landlord that they would pay for the cost of a health inspector to attend; however, the landlord refused.

The tenant testified that they initially contact the police and they were told that the police do not attend premises for a smell of drugs and that was an issue between the tenant and the property owner.

The tenant testified that they initially called the landlord; however, as it late at night the landlord does not answer there phone.

The landlord submits that the tenant is starting to establish a pattern of alleging things for financial gain, by claiming the smell of drugs is impacting there health and safety. The landlord submits that the tenant’s previous landlord informed them, that the tenant makes false allegations and that there was a hearing on this issue which was dismissed.

The landlord submits they gave tenant a chance, but the allegations start soon after the tenancy commenced.

The landlord submits the tenant’s allegations are unfounded and the claim of other occupants using crack cocaine is false. The landlord submits the police and fire department have attended and no hazard materials were found.

Filed in evidence are incident reports from the fire department. I refer to the report incident date of March 8, 2018, which reads in part at page 5.

“Responded routine for Hazmat incident at unit #... On route I was updated by the crew that we had **the same caller with a similar complaint 6 weeks ago and it was unfounded**. MRE1 Arrived on scene, we were met by the manager, he explained that the [tenant] who is now staying with a friend is complaining of a harsh chemical smell. **The air monitor device had no indication of any hazard. The only smell that I could detect was the new carpet that had been recently installed.** I phoned the complainant ...”

[My Emphasis added.]

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In this case the tenant wants the landlord to comply with section 32 of the Act, as they believe that the smell of crack cocaine is entering their unit is impacting their health and safety. However, there is no supporting evidence from a qualified person to determine the smell was or is crack cocaine.

Simply because the tenant's daughter has used and produced illegal drugs has no weigh when determining this matter or that their witness SW statement confirms there is a smell, that does not prove it was an illegal substance.

Further, even if there was a smell that was offensive, if proven, such an illegal substance, that does not prove, it was or is a health and safety issue.

The fire department hazmat unit attended the premises and did an air-monitoring test in the subject rental unit and no hazard airborne material was found. The only smell detected was from the new carpet that was installed earlier in the rental unit. This is the second unfounded called made by the tenant for the same reason.

I find the tenant has failed to prove the landlord has failed to comply with the health, safety, and housing standards by law. I find it not necessary to make any orders against the landlord. Therefore, I dismiss the tenant's application without leave to reapply.

Cautions

The evidence support that the tenant is developing a pattern of being a nuisance. There have been at least three calls to the police, and fire department, in less than a three (3) month period and the allegations were unfounded.

I caution the tenant that should they continue to make unfounded claims and the fire department or police determine this subject rental unit is a nuisance, I find any cost associate will those nuisance calls will be the sole responsibility of the tenant. A copy of this decision can be used as evidence at any future hearing.

Further, **I cautioned the tenant** that if they continue to make unfounded claims against the other occupants or the landlord. The landlord may have grounds to end the tenancy pursuant to section 47 of the Act. A copy of this decision can be used as evidence that the tenant has been cautioned.

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: April 27, 2018

Residential Tenancy Branch