



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 732 Moody Park Rentals Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing was held, via teleconference, on November 9, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Landlord comply with the *Act*, regulations, and/or a tenancy agreement.

The Landlord and the Tenant both attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's application and evidence. The Landlord did not submit any evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the Tenant entitled to an order that the Landlord comply with the Act, or the Tenancy Agreement?

Background and Evidence

The Tenant stated that he has lived in the building for several years, and recently, new management took over the building and started to take issue with him smoking on the balcony. The Tenant provided a copy of a previous arbitration decision which he had on the smoking issue. The previous arbitrator found that the Tenant was able to smoke on his balcony. The Arbitrator stated as follows:

In this case the parties do agree that the landlord does allow tenants who request the ability to smoke on their balconies. Despite being a verbal addendum to the tenancy agreement, by the landlord's explicit acceptance of this term, I find that it now constitutes a term of the tenancy and the landlord cannot take any action against this tenant during this tenancy for smoking legal substances on his balcony.

The Tenant is just asking for the Landlord to stop issuing him warning notices when he smokes on his balcony because he is allowed to smoke out there, as per the previous arbitration hearing.

The Landlord expressed concern about the Tenant smoking on his balcony but acknowledged that he now understands that the previous arbitration decision with respect to the Tenant's ability to smoke on his balcony prevails.

Both parties confirmed that they would try to communicate openly going forward and that the Tenant would try to minimize the impact his smoking has on others in the building.

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find that the issue with the Tenant smoking on his balcony has already been ruled on by a previous arbitrator. The previous arbitrator's findings on this matter are binding on the parties, and I order the Landlord to comply with the previous findings and orders.

As stated in the previous arbitrator's decision, the Landlord cannot take action against the Tenant for smoking on the balcony. However, I encourage both parties to have open discussions, should any further issues arise as a result of the smoking, particularly if other Tenants are suffering a loss of quiet enjoyment as a result of the smoking.

Conclusion

The Landlord is ordered to comply with the already established terms of the Tenancy Agreement, and with the findings and orders made at the previous hearing.

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: November 13, 2018

Residential Tenancy Branch