



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with the service of the application and respective evidence submissions on file.

Preliminary Issue – Incorrect Landlord name on Tenant's application

At the outset of the hearing, the parties agreed to amend the landlord's name as the incorrect name had been identified in the application. The corrected landlord name is reflected in this decision.

Issues

Should an order be issued requiring the landlord to comply with the Act, regulation or tenancy agreement?

Background and Evidence

The tenant is requesting the landlord comply with the Act in regards to a neighboring tenant smoking cigarettes and marijuana within 6 meters of her apartment window. The tenant acknowledges that city by-laws permit smoking beyond 6 meters of a window or patio door. The tenant submitted pictures of the neighboring tenant smoking which she

argues is within 6 meters of her window and patio door. The tenant argues she measured the distance and it is 18 feet across from her patio.

The landlord argues the tenant only measured up to the retaining the wall near the bottom of her unit and not up to the closest window or patio door. The landlord also submitted a picture of the measurement which it submits is well beyond 16 meters. The landlord further submits that they have not had any similar complaints from other tenants in the building or previous tenants that resided in the tenant's unit. The landlord submits there have been two previous tenants who resided in the same unit who made no complaints about this neighboring tenant smoking. The landlord argues that smoking cigarettes and marijuana is legal and they have no authority to take any action if the tenants in the building are abiding by city by-laws. The landlord testified that they enforce city by-laws on all tenants. The landlord testified that they even tried to accommodate the tenant by moving her to a comparable unit at the landlord's cost but the tenant refused this offer.

Analysis

I find the tenant has failed to establish that the landlord is not in compliance with the Act, Regulation or tenancy agreement. I accept the landlord's testimony and evidence and find that the neighboring tenant is smoking within city by-laws. The picture submitted by the tenant in support of her claim, clearly shows that the measurement taken by her was not to the closest window or patio door but rather to a retaining wall.

The tenant's application is dismissed without leave to reapply.

Conclusion

The tenant's application is dismissed 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: June 25, 2019

Residential Tenancy Branch