



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRICHTON HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code OLC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on August 19, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord comply with the *Act*, regulation, and/or tenancy agreement; and
- an order granting recovery of the filing fee.

Both Tenants attended the hearing but only J.D.P. provided evidence and made submissions. The Landlord was represented at the hearing by H.C., an agent. J.D.P. and H.C. provided affirmed testimony.

The parties agreed that a Notice of Dispute Resolution Proceeding package and a subsequent documentary evidence package were served on and received by the Landlord. The parties were in attendance and were prepared to proceed. Pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act*. The Landlord did not submit documentary evidence in response to the Application.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement?
2. Are the Tenants entitled to recovery the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirms the tenancy began on August 1, 2018. Although unable to provide the exact amount of rent due, the parties agreed that rent in the amount of approximately \$937.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$455.00 which the Landlord holds.

The Tenants have requested an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement. Specifically, the Tenants want to be able to smoke on the deck of their rental unit. J.D.P. referred to paragraph 43 of the tenancy agreement which prohibits smoking “within the rental unit”. This provision also stipulates that smoking on the rental property must be in accordance with British Columbia smoking laws. J.D.P. advised that the Tenants’ desire to smoke on the deck was considered by both parties when the tenancy agreement was entered into and that changes were made to reflect the Tenants’ concerns.

In further support, the Tenants submitted a photograph of their deck. Written on the photograph are measurements taken by the Tenants. They indicate the distances from the side of the deck to the nearest corner of the building. The measurements are 6.4 meters and 7.3 meters, respectively. There are no other windows, doors or other openings visible in the image.

In reply, H.C. acknowledged that smoking is permitted on the rental property. However, she submitted that the Tenants’ deck is part of the rental unit and therefore smoking is not permitted on the deck. T.C. also submitted that paragraph 43 of the tenancy agreement means smoking must take place outside a specified distance from windows and doors. H.C. testified that the Landlord has taken steps to make the rental property a smoke-free building. H.C. also testified that she has been able to smell smoke from the Tenants’ deck on the second floor.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 62(3) of the *Act* empowers the director to “make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies.”

In this case, I find that paragraph 43 of the tenancy agreement prohibits smoking within the rental unit and that the Tenants’ deck is part of the Tenants’ rental unit. I also find that paragraph 43 of the tenancy agreement prohibits smoking within a specified distance from windows, doors and other openings. Therefore, I find that smoking on the Tenants’ deck breaches paragraph 43 of the tenancy agreement because it occurs adjacent to a window, door or other opening.

Further, I do not accept the testimony of J.D.P. as it relates to the change to the tenancy agreement. The change merely deleted a provision that prohibited all smoking on the residential property. It was agreed during the hearing that smoking is permitted on the rental property in accordance with paragraph 43 of the tenancy agreement.

In light of the above, I find that the Application is dismissed without leave to reapply.

Conclusion

The 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: October 11, 2019

Residential Tenancy Branch