



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC FFT

Introduction

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

- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlords confirmed receipt of the tenants' application for dispute resolution hearing and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenants' application and evidence package. The landlords did not submit any written evidence for this hearing.

Issues

Are the tenants entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began in June of 2017. The tenants reside in the upstairs portion of the home, while the lower floor is occupied by other tenants. Currently monthly rent is set at \$1,970.00, payable on the first of every month. The tenants paid a security and pet damage deposit in the amounts of \$950.00 each deposit.

The tenants testified in the hearing that despite the fact that both the upstairs and downstairs are both non-smoking tenancies, the downstairs tenants smoke inside the home. The tenants testified they have communicated their concerns to the landlords about the smoking, which includes marijuana smoke.

The tenants are requesting an order that the landlords enforce the non-smoking condition of the tenancy agreement. The tenants testified that the smoke would enter their rental unit through the doors and vents. The tenants testified that they have been patient, and have waited at least 10 months for a resolution of the matter. The tenants testified that the landlords have not issued any written notices to end tenancy for contravening the tenancy agreement, and despite the freezing temperatures have had to leave the door open to ventilate the smoke.

The landlords testified in this hearing that the landlords have done everything possible to deal with the issue, but the tenants have denied that they smoke inside the home. The landlords testified that they taken many steps to deal with the issue including performing several home inspections, but have discovered no signs of smoke inside the home. The landlords have also called the police, and communicated to the tenants directly. The landlords testified that the tenants were cooperative, and offered to discuss the matter with the applicants. The landlords testified that the upstairs tenants have been uncooperative, aggressive, and unwilling to discuss the matter. The landlord testified that the area had frequently smelled of marijuana before the tenants had moved in, and there is insufficient evidence to support that the tenants smoke inside the home.

Analysis

I have considered the evidence and testimony provided by both parties in this hearing. I find that the landlords have addressed the matter by performing inspections as allowed by the *Act*, and by discussing the matter with the tenants.

Section 29 of the *Act* prohibits the landlords' right to enter the rental suite except with proper notice or the tenants' permission. The landlords' right to enter a rental unit is restricted, and the landlords must not enter unless:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

The landlords have an obligation to comply with section 29(1) of the *Act* as set out above, and have acted in accordance with the *Act* to investigate the matter.

Furthermore I accept the testimony of the landlords that when discussed with the tenants about smoking on the property, the tenants have denied doing so. The testimony of the landlords is that the area often smelled like marijuana before the downstairs tenants had moved in. In light of the evidence before me, I find that there is insufficient evidence to support that the marijuana smoke originated from the downstairs tenants' suite, or was due to the tenants smoking on the property.

Although I find that the tenants' expectations of this tenancy have not been met, I find there is insufficient evidence for me to make a finding that the landlords have failed to meet their obligations regarding this matter. On this basis, I am dismissing the tenants' application without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenants were not successful in their application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application. The tenants must bear the cost of this filing fee.

Conclusion

The tenants' entire 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: January 21, 2020

Residential Tenancy Branch