



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MISSION GROUP RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OLC, MNDCT, RP

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to make repairs, and for an Order requiring the Landlord to comply with the *Residential Tenancy Act* (Act) and/or the tenancy agreement.

The Tenant stated that on April 17, 2020 the Dispute Resolution Package was sent, via email, to the Agent for the Landlord he typically communicates with in regard to this tenancy. Service of documents via email was permitted in April of 2020, due to the COVID-19 pandemic.

The Tenant stated that after sent the email he spoke with the Agent for the Landlord they spoke about the issues he raised in his Application for Dispute Resolution, which caused him to conclude that she had received the hearing documents. The Tenant stated that they managed to resolve all of the issues in the Application for Dispute Resolution, with the exception of whether he has the right to use a gas barbecue on the property. He stated that he is withdrawing all of his applications, with the exception of the issue with the gas barbecue.

In the absence of evidence to the contrary, I find that the Dispute Resolution Package was served to the Landlord, via email, on April 17, 2020. As the documents have been properly served to the Landlord, the hearing proceeded in the absence of the Landlord.

On April 12, 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

Issue(s) to be Decided:

Is there a need to issue an Order allowing the Tenant to have a gas barbecue?

Background and Evidence:

The Tenant stated that the written tenancy agreement he has with the Landlord declares that gas or propane barbecue cannot be used on balconies/patios.

The Tenant contends that this clause in the tenancy agreement is a breach of his right to quiet enjoyment of the rental unit.

The Tenant submits that he has a common law right to cook with a gas/propane barbecue at his rental unit.

The Tenant wants this clause of the tenancy agreement to be declared unenforceable because it breaches his right to quiet enjoyment.

Analysis:

On the basis of the undisputed testimony of the Tenant, I find that he signed a tenancy agreement, in which he agreed he would not use a gas or propane barbecue on his balcony/patio. As the Tenant agreed to this term, in writing, I find that he must comply with this term of the tenancy agreement.

Section 28 of the *Act* grants a tenant the right to the quiet enjoyment of the rental unit including, but not limited to, reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*]; and use of common areas for reasonable and lawful purposes, free from significant interference. As the Tenant agreed to not use a gas or propane barbecue, I can not conclude that his right to quiet enjoyment has been breached because the Landlord is asking him to comply with that agreement.

Section 6(3)(a) of the *Act* stipulates that a term in a tenancy agreement is not enforceable if the term is inconsistent with this *Act* or the regulations. As I have concluded that the term regarding the barbecue is not a breach of section 28 of the *Act*, I cannot conclude that the term is unenforceable.

As I have concluded that the Tenant must comply with the term in his tenancy agreement regarding the use of barbecues, I decline to issue an Order granting him the

right to cook with a gas/propane barbecue at his rental unit.

Conclusion:

The application for an Order granting the Tenant the right to cook with a gas/propane barbecue at his rental unit 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 01, 2020

Residential Tenancy Branch