



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OLC, RR

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;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenant served the landlord with the notice of hearing package and the amendment in person. Both parties also confirmed receipt of the submitted evidence of the other party. No service issues were raised by either party. I accept the undisputed affirmed evidence of both parties and find that both parties are deemed sufficiently served as per section 71 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order for the landlord to comply?

Is the tenant entitled to an order authorizing the tenant to reduce rent?

Background, Evidence, Analysis and Conclusion

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on June 1, 2019 on a fixed term tenancy until May 31, 2020 and then thereafter on another fixed term or month-to-month basis as per the submitted copy of the signed tenancy agreement dated April 24, 2019. The monthly rent was \$1,500.00 payable on the 1st day of each month. A security deposit of \$750.00 was paid.

The tenant seeks an order for the landlord to comply with the Act, Regulations or Tenancy Agreement as there is currently cannabis smoke entering the rental unit multiple times per day in large amounts from neighboring units, which is "hindering the quiet enjoyment of my unit." The tenant stated that smoke comes in from the balcony and I often have to close the windows. It is also coming in through the ceiling and the floor. The building was advertised as non-smoking and there is a non-smoking clause in my lease.

The tenant also seeks a rent reduction of \$300.00 per month for the loss of quiet enjoyment due to the significant entry of second hand smoke from neighboring units. The second hand smoke is a health hazard and it enters my unit from the balcony and windows from neighboring units as well as the floor boards(heater). I have had to keep my windows and balcony doors shut when neighbors are smoking, I have endured second hand smoke, I have had to purchase an air purifier, I have had to stay in hotels when the smoking was especially bad in the fall, I have had to continuously sent letters but he situation has not been resolved.(submitted as evidence) I am seeking the rent reduction from September 2020 to November 2020 and again from March 2021 until mid-July 2021 and until management complies with the Act and upholds my right to quiet enjoyment and my unit is no longer penetrated by substantial and ongoing second hand cannabis, cigarette and/or vape smoke. I am not seeking compensation for December 2020, January 2021 and February 2021 as neighboring windows were mostly closed in the fall and winter and I was not experiencing as much second hand smoke.

[reproduced as written]

Section 63 of the Residential Tenancy Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the two parties during the hearing led to a resolution. Specifically, it was agreed as follows:

The tenant agreed to cancel the application for dispute.

Both parties agreed that the landlord will post a new “no smoking” sign in the main lobby of the rental property. The exact wording to be determined by the landlord, however the landlord will take in the account the tenant’s concern that the no smoking policy is for the entire building, save an except with those occupants who are allowed to smoke in their units.

Both parties agreed that the landlord provide to the tenant a company contact number for her supervisor, which was done during the hearing.

Both parties agreed that the above noted particulars comprised a full and final settlement of all aspects of the dispute arising from their applications for dispute resolution.

The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this matter.

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: July 13, 2021

Residential Tenancy Branch