



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on February 21, 2022 seeking the Landlord's compliance with the legislation and/or the tenancy agreement. Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on June 20, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Both parties confirmed they received the prepared evidence of the other and on this basis the hearing proceeded.

Issue(s) to be Decided

Is the Landlord bound to comply with the *Act* and/or tenancy agreement, pursuant to s. 62 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Each party provided a copy of the tenancy agreement for reference in this hearing. Both parties signed the agreement on August 11, 2018 for the tenancy starting on September 1, 2018. There was a renewal agreement on October 15, 2019. The

monthly rent was \$1,800. Both agreements contained the specific notation: “no smoking inside the house.”

The Tenant resides in the upper unit of a two-unit rental property that has a basement below that is occupied by other tenants. There is a shared laundry room.

On their Application, the Tenant described the downstairs tenants smoking near the Tenant’s windows and this “make[s] excessive second hand smoke into 2/3 of bedroom & our back room”, with one room belonging to their newborn. After the Tenant’s query about this to their Landlord, the “Landlord said [they] asked [the downstairs tenants] to move they continue to smoke where it produced very bad second hand smoke.” The Tenant also set out the downstairs tenants smoking in the shared laundry room.

In the hearing the Tenant set out a timeline of their queries to the Landlord, with reference to the text messages they provided in their evidence. They presented that their first complaint to the Landlord was in March 2021. By October 2021 they mentioned second-hand smoke within their unit and asked the Landlord if the downstairs tenants could move elsewhere to smoke. This continued on consecutive days, with the Landlord responding “they [*i.e.* the downstairs tenants] promised me.” The Tenant’s evidence on their requests to the Landlord, and the Landlord’s responses, are set out in 31 separate images of text messages setting out the Tenant’s detailed requests, including photos of what they could observe of the downstairs tenants’ smoking locale.

The Tenant also set out this continued within the last month prior to this hearing. This is primarily when the downstairs tenants’ friends visit. The Tenant’s perception is that the Landlord shows favour to the downstairs tenants by trying to evict the Tenant, instead of solving the issue based on their complaints.

In their documents, the Landlord presented written accounts from each of the downstairs tenants’ own complaints to the Landlord regarding the Tenant’s noise. Primarily they are “disrespecting the common area” and “not respecting quiet hours.” This evidence shows the downstairs tenants having to call the police because of noise complaints. Matters even carried over into the shared laundry area.

In the hearing the Landlord described their own inspection visits to each rental unit, upstairs and downstairs, in March 2022. They described the Tenant’s own unit as having a “really heavy smoke smell”, forcing them to walk out from the unit. The Tenant denied smoking indoor in their own rental unit, pointing to deficient weather stripping as

causing smoke to enter when they smoke outside in front. The Landlord's inspection of the downstairs tenants' unit was "totally clean" and they noted the description in their own evidence of either the downstairs tenants either smoking very minimally ("1 or 2 cigarettes per day") or pointing to the source of smoke coming from the Tenant's unit upstairs.

The Landlord clarified that smoking is allowed on the property; however, there is not enough evidence here for the Landlord to end the downstairs tenants' tenancy. There is a "huge front yard" as well as an open alley behind the property and tenant have separate areas available to them, they can use.

Analysis

I find the Landlord has not been derelict in responding to the Tenant's queries as well as their raising the issue of their quiet enjoyment being impacted by the downstairs' tenants smoking near their windows.

The evidence shows the Landlord responded when necessary. As well, the Landlord set a laundry schedule in the past due to conflict between the Tenant and the downstairs tenants with use of that space, as well as smoking in that shared common area. That no longer continues to be a problem and I draw on that past experience to show the Landlord is being proactive in addressing concerns from either side on the ongoing conflict.

With respect to the tenancy agreement and the *Act*, I find there is no violation of terms or non-compliance by the Landlord. There is no evidence of the Landlord not addressing the issue or otherwise shirking their responsibilities to the Tenant here.

The simple reality here is that both the Tenant and the downstairs tenants are smokers. This is causing issues with boundaries between the two, particularly with second-hand smoke from the downstairs tenants disturbing the Tenant in their rental unit. The Landlord in the hearing stated there was plenty of yard space for either party to accommodate their need to smoke, well away from the house that is strictly no smoking indoors.

As was undertaken with the laundry room in the past, I suggest a system with strict boundaries for areas in which either the Tenant or the downstairs tenants may smoke. I will not *order* the Landlord to do so because it is not an obligation conferred by the *Act*

or the tenancy agreement; however, in the interests of ensuring all residents' quiet enjoyment I find it is necessary for the Landlord to set boundaries.

The Landlord spoke of plenty of yard space available to all parties for smoking. The Tenant in the hearing stated they could agree with only a set area on the property available for smoking. They also expressed their concern that the downstairs tenants would not maintain use of a set area. This decision stands as a record of the Tenant's willingness to try a solution in the interests of alleviating the conflict. Should the issue continue, the Tenant has this record as proof of a negotiated solution being put forth in the hearing at which the Landlord was present.

The discussion in the hearing with the Landlord mentioned the following points:

- the Landlord considers any smoking within the house itself to be a serious enough reason to end the tenancy (as written into the tenancy agreement)
- an area entirely separated from the house itself, such as the alleyway at the back of the property, is available for all parties' use for smoking, as well as any guests to the property
- this area is the single delegated space available for smoking with no exceptions and not subject to inclement weather.

As was the case with the laundry area, the Landlord may wish to set times for either of the upstairs Tenant or the downstairs tenants to alternate their available smoking times within the space. For example, one solution may be to alternate that availability on a half-hour cycle, with the Tenant having the space available on each hour, and the downstairs tenants having the space available to them on each half-hour.

I would also recommend the Landlord have each of their tenants sign a separate agreement on this use of space. That would stand as a record for the Landlord to refer to should any of their tenants not comply with the arrangement. That would also stand as steadfast proof of the Landlord's attention to the matter of all tenants' right to quiet enjoyment.

Such an agreement is in the interests of all parties within the unit to alleviate conflict. The issue is not whether actual smoking occurred by any of the parties; rather, the issue is the Landlord affording every tenant their right to quiet enjoyment.

As above, I find there was no area in which the Landlord was not in compliance with the *Act* or the tenancy agreement, having responded to and addressed the Tenant's concerns in the past. Because of this finding, I dismiss the Tenant's Application.

I grant the Tenant a one-time reduction in rent for \$100 for reimbursement of this Application filing fee. This is acknowledgement to the Tenant for their evident willingness to work toward a solution in this matter.

Conclusion

With my review of the evidence and the testimony of the parties in this hearing, I dismiss the Tenant's Application for the Landlord's compliance with the *Act* and/or the tenancy agreement.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 21, 2022

Residential Tenancy Branch