



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed October 7, 2022, wherein the Tenants requested an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement.

The hearing of the Tenants' Application was scheduled for hearing at 9:30 a.m. on December 16, 2022. Both Tenants called into the hearing, as did the Landlord's Regional Property Manager, A.S., the Portfolio Administrator, T.B. and a witness J.W. J.W. was excluded during the hearing.

The hearing was conducted by teleconference at 9:30 a.m. on December 16, 2022. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the

evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the Tenants entitled to an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement?

Background and Evidence

The Tenants submitted that despite the fact they are permitted to have an electric grill pursuant to their tenancy agreement, they have received numerous warning letters and threats of eviction of their use of their grill.

A copy of the tenancy agreement was provided in evidence before me and which included the following:

(16) Subject to approval granted pursuant to guideline 6.1(3), owners, Tenants, and occupants must keep balconies, patios and decks clean and tidy and must not display, affix or erect fixtures, poles, racks, storage sheds or similar structures permanently or temporarily within balconies, patios or decks, whether they are part of the apartment, or common area, except as specifically permitted by these rental guidelines, and with the required approval. Despite the foregoing, the placing of the following items on the balconies, patios and decks shall be permitted without any requirement for specific permission or approval subject, to the general requirement that these items be kept clean, in good order and in good repair:

...
(e) Electric and Propane Barbeques are permitted, which must be properly stored, used and maintained in compliance with manufacturer's directions...

The Tenants provided in evidence numerous letters they have received from the Landlord regarding the use of their electric grill. In these letters the Landlord describes the Tenants' grill as a "wood burning device". D.G. confirmed the unit is in fact an electric grill/smoker that uses wood to season food, but is electric, and not wood burning. The Tenants also provided manufacturer's information regarding their electric grill.

D.G. stated that having an electric grill and the ability to cook outside was a large reason why they moved into the rental unit. D.G. also described himself as a "foodie"

and stated that he uses the grill regularly, sometimes only once or twice a week and at other times five times a week. D.G. stated they try to minimize the smoke and smell from the grill as they are aware it bothers their upstairs neighbours and that he has even looked into ways to vent the smoke and smell, as a means to address the neighbours concerns.

The Landlord's representatives confirmed the Tenants are permitted to have an electric grill pursuant to their tenancy agreement. They also conceded that the unit used by the Tenants is an electric grill as permitted. The Landlord's representatives stated that they are trying to address the neighbours concerns about the smell from the Tenants' electric grill and have even offered to move the neighbour to a different unit. The admitted that they were "at a loss" as to how to address this as they try to balance the rights of all tenants in the rental building.

Analysis

The Tenants seek an Order that the Landlord comply with the *Act*, the *Regulations*, and/or the tenancy agreement and cease issuing warnings and threatening eviction regarding the use of their permitted electric grill/smoker.

I find that the tenancy agreement clearly provides that the Tenants are permitted to use an electric grill or a propane barbeque on their balcony. The information provided by the Tenants confirms the unit used by the Tenants is electric, and not wood burning as alleged by the Landlords.

I accept the Tenants' testimony that they attempt to direct the smoke and smell away from J.W.'s rental unit and that they are doing all they can to minimize the impact on her. I also accept their testimony that they keep their electric grill/smoker clean, in good order and in good repair as required by their tenancy agreement and that they properly store, use and maintain the grill in compliance with the manufacturer's directions.

I also accept the Tenant's testimony that having an electric grill/smoker was a large reason why they agreed to rent this unit as it gives them the ability to prepare food outdoors.

Managing the competing interests of tenants and occupants in a multi unit building is a difficult task at times. Noise complaints are common particularly in older buildings with inadequate soundproofing or where neighbouring tenants are on different work

schedules. Smells from cooking can also create conflict between neighbours and complaints to the Landlord.

I accept the Landlord's Representative's submissions that the smell from the Tenant's electric grill is bothersome to their neighbour, J.W. I also accept their submissions that they are doing their best to address J.W.'s concerns by communicating with the Tenants. However, the nature of the warning letters sent by the Landlord to the Tenants clearly indicate the Landlord intends to end their tenancy if they continue to use their electric grill. As this grill is permitted pursuant to the tenancy agreement, the Tenants should not be subjected to the stress of worrying that their tenancy is in jeopardy.

I therefore grant the Tenants' request. Provided the Tenants continue to abide by their tenancy agreement in terms of storage, maintenance and use of their electric grill/smoker, the Landlord shall not issue any further warnings or threats of eviction to the Tenants. The Landlord is cautioned that continued communication about the electric grill/smoker may result in a claim by the Tenants for compensation for breach of their right to quiet enjoyment of the rental unit pursuant to section 28 of the *Act*.

Should the parties find a venting solution which alleviates the smoke and smell issues arising from the Tenants' grill/smoker the parties are at liberty to reapply to the Residential Tenancy Branch for direction as to the installation and cost of such a system.

Conclusion

The Tenants request for an Order that the Landlord comply with the *Act*, the *Regulations* and/or the tenancy agreement is granted.

The Tenants are permitted to use their electric grill/smoker on their balcony, provided they comply with the tenancy agreement's requirement that they store, maintain and use the unit in accordance with the manufacturer's recommendations and keep the unit clean and in good order and good repair.

Should the Tenants comply, the Landlord shall not issue any further warnings to the Tenants or threaten eviction for use of their electric grill/smoker.

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: December 21, 2022

Residential Tenancy Branch