



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on September 29, 2022, wherein the Tenant sought an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or residential tenancy agreement as well as recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference at 9:30 a.m. on December 6, 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.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Tenant's Application concluded on December 5, 2022. This Decision was rendered on January 11, 2023. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30-day period.

Issues to be Decided

1. Is the Tenant entitled to an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or residential tenancy agreement?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided in evidence before me. This tenancy began May 1, 1997. Monthly rent is \$984.00 and the Tenant paid a security deposit of \$392.50.

The Tenant sought clarification regarding the smoking clause in her tenancy agreement. She stated that despite the fact her agreement clearly provides she and her guests are allowed to smoke on the balcony, the Landlord has threatened her to end her tenancy as a result of smoking.

Clause 43 of the tenancy agreement provides as follows:

Smoking of tobacco products only is limited to the area described as Balcony.

This section was initialed by both the Landlord and the Tenant.

Also included in the Tenant's evidence were copies of correspondence from the Landlord. In this correspondence the Landlord informs all the tenants of the rental building that there is no smoking in the building and directs the tenants to smoke in a gazebo.

The Landlords conceded that the Tenant's tenancy agreement permits her to smoke on the balcony, but expressed concerns about the impact of smoking on other tenants. The Landlords confirmed that they have received complaints from others regarding the Tenant and/or her guests smoking on the balcony.

Analysis

This tenancy began in 1997 such that at the time the hearing occurred the Tenant had resided in the rental unit for 25 years. The relevant clause of the tenancy agreement has been reproduced in this decision, and it clearly provides that the Tenant and her guests are permitted to smoke on the balcony.

A residential tenancy agreement is a legally binding contract which sets out the rights and obligations of the tenant and the landlord. The parties are bound by the tenancy agreement, which was signed when this tenancy began in 1997. While there has been a culture shift in terms of smoking in general, I find that this Tenant, and her guests, are permitted to smoke on the balcony pursuant to clear terms of her tenancy agreement.

I therefore grant the Tenant's request for an Order that the Landlord comply with the tenancy agreement. The Landlord shall ensure the Tenant's right to smoke on her balcony is not impeded and that she is not threatened with eviction in relation to this activity on her balcony.

As the Tenant has been successful in her Application, I grant her request to recover the filing fee. Pursuant to section 72 of the *Act*, I authorize the Tenant to reduce her next month's rent by \$100.00.

Conclusion

The Tenant's Application is granted. The Tenant is permitted to smoke on her balcony as per the terms of her tenancy agreement. The Landlord shall not threaten the Tenant with eviction as a result of the Tenant or her guests smoking on the balcony.

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 11, 2023

Residential Tenancy Branch