



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding MAVIS MCMULLEN HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (Application) that was filed by the Tenant under the Residential Tenancy Act (the Act) on January 10, 2023, seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice).

The hearing was convened by telephone conference call at 11:00 A.M. Pacific Time on February 17, 2023, and was attended by the Tenant and two agents for the Landlord (Agents) A.Y. and K.M. All parties provided affirmed testimony. As the Agents acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP) and stated there are no concerns with regards to service date or method, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

At the request of the parties, copies of the decision will be emailed to them at the email addresses confirmed in the hearing.

Settlement

The opportunity for settlement was discussed with the parties during the hearing. The parties were advised on several occasions during the hearing that there is no obligation to resolve the dispute through settlement, but that pursuant to section 63 of the Act, I could assist the parties to reach an agreement, which would be documented in my Decision and any supporting orders.

During the hearing, the parties mutually agreed to settle this matter as follows:

1. The parties agree that the One Month Notice is cancelled and of no force or affect.
2. The Tenant agrees as a material term of the tenancy agreement that neither they, nor their guests, nor any occupants will smoke inside the rental unit or inside the building.
3. The Tenant agrees as a material term of the tenancy agreement that neither they, nor their guests, nor any occupants will smoke outside on the residential property in a location that is within 6 meters of an air intake, door, or window. The parties agreed that the most preferable location for smoking was just outside the back gate.
4. The Tenant agrees as a material term of the tenancy agreement that neither they, nor their guests, nor any occupants will smoke on the balcony unless or until the balcony is sealed by the Landlord with some kind of barrier intended to prevent smoke from escaping and penetrating other rental units.
5. The Landlord agrees to within one week of today's date, schedule someone to attend the rental unit to assess whether the balcony can be enclosed with some type of vapour barrier, and if so, to obtain a quote and timeline for installation.
6. If installation is possible and not prohibitively expensive to the Landlord, the Landlord agrees to have one installed at their own cost as soon as reasonably possible.
7. When/if a barrier is installed, the parties agree that a two-week trial period will commence where smoking will be permitted on the balcony to ascertain if this resolves the matter of second-hand smoke transfer to other units/occupants, thus eliminating health risks and complaints. If it does, smoking may continue in this location.

8. The parties agree that if complaints are received about smoke from the balcony after the barrier is installed, the Tenant, their guests, and any occupants must immediately cease smoking there upon notification of these complaints by the Landlord or their agents.
9. The parties agree that if complaints are received, the Tenant has the right to obtain an air purifier, at their own cost, for use on the enclosed balcony, to see if this will resolve the issue. The Tenant agrees that neither they, nor their guests, nor any occupants will smoke on the enclosed balcony after complaints are received and until an air purifier is purchased and installed.
10. If installation of an air purifier does not then resolve the second-hand smoke transfer issue, the parties agree that the Tenant, their guests, and other occupants will no longer be permitted to smoke on the balcony.
11. The Tenant withdraws their Application in full as part of this mutually agreed settlement.

This settlement agreement was reached in accordance with section 63 of the Act.

Conclusion

I order the parties to comply with the terms of the mutual settlement agreement described above.

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

Dated: February 17, 2023

Residential Tenancy Branch