



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC, FF, SS

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant requested Orders that the landlord comply with the Act. The tenant also requested an Order for substitute service and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The parties confirmed receipt of all evidence supplied by the other.

The landlord and Residential Tenancy Branch (RTB) were each given a CD by the tenant; no content could be seen.

The tenant served the landlord and the RTB with a flash drive device which contained a video of the tenant; this device was able to be viewed and was considered.

The tenant did not require an Order for substitute service.

Issue(s) to be Decided

Must the landlord be Ordered to comply with the Act?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenant has lived in the rental unit for the past 8 years. The building is wood-frame construction and was built in 1976.

When explaining his application the tenant listed a number of concerns that he has in relation to the management of the building. The tenant said that the failure of the landlord to deal with issues has resulted in a loss of quiet enjoyment to the tenant.

The tenant indicated that the following matters were of concern:

- Occupants are allowed to smoke on their balconies and the smoke disturbs the tenant;
- The landlord refuses to prop open several exit doors on the main floor;
- The landlord refuses to move the tenant to a unit on the upper floor of the 3 storey building;
- That other occupants have multiple guests visit and that the guests will smoke on the balconies; and
- The occupant in the unit above the tenant disturbs him by dropping things and walking around.

The video supplied by the tenant showed the tenant confronting an adult male, who was using a couch in a lounge area of the building. The tenant demanded to know who the adult was visiting; which resulted in the adult using his telephone to call his mother and asking her to come out to speak with the tenant.

The tenant supplied a significant amount of evidence, some of which included photographs of the main floor-level doors, walkways, lighting, a bench at the front of the building where people smoke; newspaper articles in relation to a smoking ban inside the building; pictures of the managers and other occupants and letters of warning issued to the tenant by the landlord

The landlord said that the building is run by a non-profit agency and that they do not allow moves within the building. When a vacancy occurs, the landlord can only afford to prepare 1 unit for rent; vs. the 2 unit preparation that would be required if they allowed internal moves.

The landlord said that the building is inspected as required by the fire department and that no safety issues have been raised.

The landlord said he did not understand the purpose of the tenant's application; the tenant respond that he wanted quiet; however he did not want any hard feelings. The tenant said he would not bother the landlord.

The landlord was ready to have witnesses testify in relation to the tenant's behaviour; however the need for witnesses was deemed unnecessary; given the nature of the application.

Analysis

The Act entitles a tenant to the peaceful enjoyment of their home. In this case, from the evidence before me, I cannot find any deficiency with the management of the building or the actions of the landlord.

The tenant resides in an older wood-frame building, where it can be expected you would hear sounds of items being dropped or other occupants moving about; these are the sounds of normal day-to-day living. There was no evidence before me of any unusual disturbances experienced by the tenant.

There was no evidence before me that the landlord has not maintained the building properly or that the landlord has failed to ensure the points of entry to the building are safe. There was also no evidence before me that occupants are not allowed to smoke on their balconies. The Act does not require a landlord to allow a tenant to move within a rental building and Orders cannot be issued unless there is a breach of the landlord's obligations, as set out in the Act.

I found that the video evidence, in fact, showed the tenant acting in what I would describe as an aggressive manner with the adult son of another occupant. During the hearing I warned the tenant that this evidence, which he supplied, did not reflect appropriate behaviour on his part. The tenant was told that any concerns he might have in relation to the presence of others, or their behaviour, should be passed on to the landlord. The tenant was told that other occupants are allowed to have guests visit and that the tenant cannot expect the landlord to prohibit this right.

I find that the tenant's application, while accompanied by written submissions, failed to supply anything more than a list of grievances against the landlord, which were unsubstantiated and almost frivolous in nature.

Therefore, in the absence of any evidence that the landlord has breached the tenant's right to quiet enjoyment I decline to issue Orders and dismiss the tenant's application.

Conclusion

The application is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 10, 2013.