



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Terra Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC

Introduction

This was the hearing of an application by the tenant for a monetary order and an order that the landlord comply with the *Residential Tenancy Act*, Regulation or tenancy agreement. The hearing was conducted by conference call. The tenant attended with her advocate and the named landlord's representatives participated on behalf of the landlord.

Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?
Should the landlord be directed to comply with the Act, Regulation or tenancy agreement?

Background and Evidence

The rental unit is an apartment in New Westminster. The tenancy started some 19 years ago. The current rent is \$591.00. The rental property is operated by a non-profit society to provide housing to low income seniors. The tenant, who is 69, suffers from lung problems; she has chronic obstructive pulmonary disease and has some heart problems. The tenant testified that in October, 2013 a new tenant moved into the apartment next door to her. The tenant has complained that the neighbour smokes marijuana in his apartment. The smoke enters her unit and adversely affects her health. She said that she is on medication and has been hospitalized as a result of the smoke and its health effects. When the tenant complained and submitted letters to the landlord, the landlord's representative visited the neighbour's apartment and confirmed that he was smoking marijuana.

The tenant testified that the neighbour continues to smoke in his suite and because the landlord has told him that she complained about him, the neighbour is now threatening her and she is frightened that he will harm her, or damage the scooter that she depends on for transportation. The tenant complained that the tenant smoke marijuana very late at night or after midnight and keeps her from sleeping. She complained that the landlord will not investigate her complaints.

The landlord's property manager testified that the rental property became a non-smoking building in September, 2012 and all new tenants must sign a non-smoking agreement, however, existing tenants who smoke are 'grandfathered'. The landlord's representative said that the occupant who moved next door to the tenant signed the non-smoking agreement. When the landlord spoke to him after receiving complaints from the tenant, he admitted that he had smoked in his unit. In December he promised that he would go off the premises to smoke so as not to jeopardize his tenancy.

In January the tenant again complained to the landlord about smoke. The landlord sent a warning letter to the neighbour to advise that the police may be contacted if there is a further occurrence of marijuana smoke and that his tenancy might be ended. The tenant was also advised to contact the police if there was another incident.

The tenant did contact the police to complain of marijuana smoke. A police officer attended on or about January 22nd, but as reported to the landlord, he was unable to detect the smell of smoke in the tenant's unit. After a further complaint from the tenant on January 23rd. The landlord sent what was referred to as a "final warning letter" to the neighbour. The letter stated that if another complaint was received about smoking legal or illegal substances. He would be served with a Notice to End Tenancy. The neighbour responded to the letter with a letter in reply. He said that he has not smoked on the premises since December and he complained that the accusations against him were untrue and characterized the landlord's letters as harassment. The landlord said that since January the tenant has made some further complaints about smoke, but no other occupants have noted any smoke related smells, apart from one complaint in January from an occupant one floor above the tenant. This occupant has stated that there has been no repeat occurrence since January

The landlord stated in a written submission that:

We take this matter very seriously and addressed (name of tenant)'s complaints in a manner that was what we believe to be fair and reasonable and within the realms of the Residential Tenancy Act. The final warning letter to the tenant of (apartment number) of January 23, 2014 still stands. It is a serious warning and one that can potentially cost someone their affordable housing and therefore we need to ensure that there is enough proof and evidence before it can be enforced. At this point we only have the word of one tenant against the other.

The tenant testified that there have been further incidents of smoking, one in February and another in April, both in the middle of the night and the landlord would not take steps to investigate. The tenant said that her neighbour has made threatening remarks to her and she blames the landlord for disclosing her identity as the source of the complaints. She said that she is afraid to be alone in the presence of the neighbour. The landlord's representative denied that the landlord had disclosed information to the neighbour and suggested that this disclosure came about because the police had attended and spoken to the tenant and to the neighbour. The landlord does not

consider that the neighbour, who is a small older man constitutes a physical threat to the tenant.

Analysis

The tenant has claimed a monetary order in the amount of \$2,695.87. I was told that this was the amount of rent paid from October 2013 to the date of the hearing and the tenant contended this was an appropriate amount of compensation for her loss of quiet enjoyment.

On the evidence the tenant has been inconvenienced by marijuana smoke on several occasions, but I find that the landlord has acted appropriately in addressing the problem with the neighbour and I do not find that the circumstances warrant an award of compensation from the landlord. If there is evidence in the future that there are breaches of the no-smoking provisions and the landlord does not act to address them then the matter of compensation may be re-visited in another application by the tenant.

The landlord stands by the final warning letter that it has given to the neighbour and is prepared to evict him if there is a further proven episode of smoking. I find that the landlord's stance in this matter is appropriate, but the landlord should be prepared to respond to investigate a complaint by the tenant of smoking even if it is made at a late hour, provided that it is based on a report of a smoking occurrence made at the time of the event.

Conclusion

The tenant's application is dismissed with leave to reapply if there are future problems with smoking and the landlord fails to address them appropriately.

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: May 30, 2014

Residential Tenancy Branch

