



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. As the landlord's representatives confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on May 27, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses and other monies owed arising out of this tenancy? Should any other orders be issued with respect to this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

On July 1, 2018, the parties signed a month-to-month Residential Tenancy Agreement (the Agreement), a copy of which was entered into written evidence by the tenant. According to the terms of the Agreement, monthly rent was set at \$940.00, plus \$20.00 for parking, payable on the first of each month. The landlord continues to hold the tenant's \$470.00 security deposit paid on June 15, 2018. On July 1, 2019, the monthly rent increased to \$963.00.

The tenant's application for a monetary award of \$1,200.00 sought a retroactive rent reduction for the first twelve months of their tenancy of \$100.00 per month. This reduction was for the landlord's alleged failure to address their concerns about smoking in rental suites, common areas and balconies in this 52 unit, four floor rental building. The tenant also requested an ongoing \$100.00 monthly rent reduction until such time as the landlord takes measures to ensure that residents and occupants in this rental building abide by the no smoking restrictions on this rental property.

The tenant entered into written evidence copies of a series of letters commencing on September 12, 2018 requesting the landlord's assistance in ensuring that residents abide by the no smoking rules for this building. The tenant maintained that their health was being compromised by the second hand smoke the tenant is required to breathe both inside their rental unit and when they attempt to enjoy their balcony. While the tenant had general concerns about tenants who smoke tobacco and marijuana products in the building and on their balconies, the tenant was particularly focussed on the activities of the tenant who resides below them (the landlord's witness at this hearing). The tenant maintained that the landlord's witness smokes within his rental unit and makes a practice of smoking on his balcony, affecting the tenant's quiet enjoyment of their premises and the value of their tenancy. The tenant alleged that the management in this building has refused to take action to address the tenant's concerns about smoking in this building.

Although the tenant maintained that others in this building were also concerned about the landlord's refusal to take effective action to address this situation, the tenant could not provide names or the identities of these other tenants because the tenant maintained that they were fearful of being subjected to harassment by the building's managers should they voice their concerns publicly. The tenant provided written evidence and photographs of notices on various doors within this rental building advising that this was a no smoking building. The tenant said that when they approached the landlord about renting a suite in this building no one representing the landlord advised them that smoking was allowed on balconies of this rental building.

They testified that had they known that this was anything other than a smoke free building, they would certainly not have rented accommodation in this building.

The landlord's representatives noted the following wording of Clause 9 of the Agreement that the tenant signed when they moved into another suite in this building:

9. Smoking is NOT permitted in the suite and common areas such as hallways and entry.

The landlord entered into written evidence a copy of a March 25, 2013 notice to all residents in this rental building reminding them that smoking was not permitted in this building, "it is only permitted on the balconies and exterior common areas." The landlord's representatives confirmed that they did not provide a copy of this notice to the tenant when this tenancy began, and that their first provision of this information to the tenant was by way of their written evidence in response to the tenant's application for dispute resolution.

The landlord's representatives gave undisputed sworn testimony that to the best of their knowledge no one smokes within their rental suites within this building, although smoking is and always has been allowed on the balconies of the suites. The landlord's representatives who have both been working for the company that manages this building for over ten years testified that as far as they could recall no one had ever complained about smoking in this building other than the tenant. They gave undisputed sworn testimony that they addressed the tenant's concerns about the original rental suite that the tenant rented when they allowed the tenant to move from that second floor rental suite to the tenant's current rental suite on the fourth floor of this building..

Landlord representative RM (the landlord) testified that they conduct annual inspections of all suites in this building and that they have not noticed evidence of smoking within the rental suites, including the suite below the tenant where the landlord's witness resides. The landlord testified that smoke alarms have been installed in every rental suite in this building and that if smoking was occurring inside suites, these alarms would be heard by the landlord's representatives. The landlord gave undisputed sworn testimony supported by written evidence that they have had repeated communication with the landlord's witness in an effort to identify ways of addressing the tenant's concerns about second hand smoke entering the tenant's rental suite. Landlord representative CF testified that they have sent the landlord's witness a written notice advising that the tenant had concerns about second hand smoke emanating from the rental suite and balcony of the landlord's witness. Both landlord representatives

testified that the landlord's witness has been very accommodating in attempting to find ways to reduce the second hand smoke entering the tenant's living space. These measures included the purchase of a fan for the balcony by the landlord's witness and the use of that fan when the landlord's witness is smoking on the balcony. Landlord representative CF testified that the tenant has been complaining about a range of matters since they first began this tenancy in another rental suite within this building. Landlord representative CF said repeatedly that no one had ever complained about smoking in this building. The landlord gave sworn testimony and provided written evidence that they believed that they had gone "above and beyond" what was expected of them as the resident manager in trying to address the concerns raised by the tenant.

The landlord's witness gave sworn testimony that since he moved into this building eight years ago, he had never smoked within his rental suite or interior common areas of this building. The landlord's witness confirmed that he smokes on the balcony at night. The landlord's witness said that both he and the landlord had done everything they could to try to resolve the concerns raised by the tenant. The landlord's witness said he felt harassed by the tenant. He said that he was aware that smoking was allowed on the balconies and that there are a number of smokers in this building who use their balconies for smoking.

In response to the sworn testimony provided by the landlord's representatives and their written evidence, the tenant said a number of times during this hearing that only 2 % of what the landlord's representatives had said or maintained in writing was true. Both landlord representatives testified that everything they had said under oath was true.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. In this case, the onus is on the tenant to prove on the balance of probabilities that there has been a contravention of the *Act* or their Agreement by the landlord.

Section 28 of the *Act* outlines the following protections afforded to tenants for their right to quiet enjoyment of the premises they rent

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past or future rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

At several times during this hearing, the tenant questioned the landlord's representatives and the landlord's witness as to the steps that they were planning to take to discontinue smoking on the balconies of this rental building. The tenant seemed to be operating under the impression that signs on the doors of the building and the landlord's questioning before this tenancy began as to whether the tenant was a smoker equated to this building being a totally smoke free property. In this regard, I note that the wording of Clause 9 of the Agreement that the tenant signed only stated that smoking was not allowed **within** the tenant's rental suite and common areas such as hallways and entry ways. I find that this wording of the Agreement is totally consistent with the March 25, 2013 notice provided to all residents then living in this rental building that prevented interior smoking but allowed smoking on balconies and exterior common areas. The signage on the building that the tenant referred to and provided in their photographic evidence is not inaccurate in that it dissuades residents and those visiting residents from smoking in common areas or the interiors of individual suites. I find that such signage is of a general nature and does not necessarily establish that this rental building is totally smoke free, especially as tenants who reside there have been notified that smoking was permitted on their balconies and in exterior common areas.

It would certainly have been helpful had the landlord provided a copy of the March 25, 2013 notice to the tenant before the tenant signed their Agreement; however, I find nothing that contravenes the *Act* in the landlord's failure to provide a copy of that notice to the tenant prior to the commencement of this tenancy. As I see a benefit in prospective future tenants being advised of this information prior to their entering into tenancies in this building and as a way of preventing future misunderstandings of this nature, I order the landlord to provide this information in writing to prospective tenants prior to their entering into tenancies in this building.

I have no doubt that the tenant is genuinely concerned about their exposure to second hand smoke since they moved into this rental unit. Some of this second hand smoke that the tenant has found unhealthy may have resulted from the forest fires that affected this part of the province for the early portions of this tenancy, as was mentioned by the tenant at this hearing.

Although I have given the tenant's application, their sworn testimony and their written and photographic evidence careful consideration, I find that the tenant has provided insufficient evidence to establish that the landlord has been deficient in ensuring the tenant's rights as established pursuant to the *Act* or their Agreement. Both parties provided diametrically opposite versions of much of their interaction with respect to this matter and the extent to which residents in this building contravene the smoking rules for this property. The tenant has produced no witnesses or signed statements from others with knowledge of this matter to support their assertions that the landlord has ignored contraventions of the smoking restriction within rental suites and the internal common areas of this building. Other than the tenant's sworn testimony, the tenant has supplied little to confirm their assertion that only 2 % of what the landlord's representatives said at the hearing or entered into written evidence was true. I find that the landlord's representatives and the landlord's witness provided evidence that the landlord has done what is reasonable to address the tenant's concerns.

Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment and the value of their tenancy against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Landlords often try to mediate such disputes if they can, but sometimes more formal action is required. The landlord has issued a letter to the landlord's witness regarding the smoking restrictions in place in this building. If there were evidence that tenants within this building were smoking inside their rental suites, the landlord's representatives are prepared to act. Based on the evidence presented, the tenant has provided insufficient evidence to support their claim that these restrictions are being interpreted incorrectly by the landlord and that the landlord is not doing what is required to enforce the restrictions against smoking within rental suites and exterior common areas. I find insufficient evidence to demonstrate that the landlord has failed to take appropriate action to follow up on the tenant's concerns about other tenants in this building.

For these reasons, I dismiss the tenant's application for a monetary award and for a rent reduction.

Conclusion

I order that until such time as the smoking rules for residents of this building change, the landlord is to provide all future prospective residents in this building with a copy of the March 25, 2013 notice, or some future notice of this type, alerting them that although smoking is not permitted within suites or common areas of the building that smoking is permitted on the balconies and exterior common areas. I make this order pursuant to section 62 of the *Act*.

I dismiss the remainder of the tenant's application without leave to reapply.

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: July 08, 2019

Residential Tenancy Branch