

Order under Section 31
Residential Tenancies Act, 2006

File Number: SWT-01948

CH and RH (the 'Tenants') applied for an order determining that GD (the 'Landlord'), the Landlord's superintendent, or the Landlord's agent substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household.

This application was heard in Kitchener on January 20, 2009.

The Landlord appeared personally, assisted by MP. The Tenant, RH, appeared personally and as representative for CH.

Determinations:

1. I do not find that the Landlord substantially interfered with the Tenants' reasonable use or enjoyment of the rental unit or residential complex.

It is ordered that:

1. The Tenants' application is dismissed.

January 22, 2009
Date Issued

Brad Wallace
Member, Landlord and Tenant Board

SouthWest Region
4th floor, 150 Dufferin Avenue
London ON N6A 5N6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

REASONS

Reasons to Order SWT-01948 issued on January 22, 2009 by Brad Wallace.

[1] The Tenants applied for an order determining that the Landlord had substantially interfered with their reasonable use and enjoyment of the rented premises by failing to ensure a smoke-free environment at the complex. In short, the Tenants submit that, roughly four months after they moved in, the Landlord accepted smokers as tenants of a rental unit below theirs. While they acknowledge that the Landlord asked the new tenants not to smoke inside their units, the Tenants state that, with the arrival of colder weather, the lower tenants began smoking inside and, since October 2008, they have been smoking inside their units every weekend. As a result, second-hand smoke or, at least, smoke odour is carried through the complex by way of the building's ventilation system. The Tenants suffer from compromised health and, they say, serious interference with reasonable enjoyment of the property. They hold the Landlord liable for failing to provide a smoke-free environment and seek an order for \$1,500.00 in moving costs and an order terminating the tenancy effective March 30, 2009.

[2] The Tenants say that, because of "no smoking" signs posted in the common areas of the complex, they were led to believe that this was a smoke-free building. It turned out, in fact, that most of the other tenants were smokers.

[3] There was no independent proof before me of any particular flaw in the building's structure or its ventilation system. Neither was I shown any legal authority for the proposition that smoking inside a rental unit is prohibited under any circumstances in Ontario law.

[4] The *Smoke-Free Ontario Act* prohibits tobacco smoke in the enclosed common areas of residential complexes, e.g. hallways, laundry rooms, garbage rooms, recreation rooms, etc. It does not prohibit smoking *within* rental units. The presence of non-smoking signs in the common areas of the building did not amount to a promise by the Landlord that there would be no smoking inside individual rental units. The Tenants' assumption to that effect was no fault of the Landlord's.

[5] Without proof that the Landlord has breached a specific legal obligation, the Landlord cannot be held liable for allowing other tenants to do what is, at least presently, lawful in this province.

[6] That being said, I do not doubt that these Tenants consider the interference with their use and enjoyment of the premises to have been substantially and unreasonably interfered with. However, it is not enough simply find that a tenant's use and enjoyment is interfered with by the actions of other tenants without intervention by the landlord. The test is whether a tenant's "reasonable" use and enjoyment has been seriously interfered with. Expecting others at the complex to stop doing what is not illegal cannot be considered "reasonable" use or enjoyment.

[7] For all these reasons, the Tenants' application must be dismissed.

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