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Landlords can keep properties smoke-free

A decision of the Ontario Landlord and Tenant Board last month underscores the right of a landlord to insert a non-smoking clause in a residential lease, and that the clauses are enforceable in the event of breach by a tenant.

The decision is relevant to non-smoking tenants who live within breathing distance of smokers in condominiums, apartment buildings, multiplexes or even homes with basement apartments. It will also resonate with the landlords of those units.

Christine Cebula owns a unit in a highrise condo building in Yorkville. She rents it out as a luxury, furnished apartment to executives and others who need short-term, upscale accommodation for periods of three months to one year.

Some time ago, the unit was leased to a tenant named John Davidson. The lease clearly stated that no smoking was allowed in the unit.

Despite the prohibition, it became apparent that some smoking occurred. The landlord delivered a termination notice to the tenant, and when he failed to move out, she brought an application before the Landlord and Tenant Board to terminate the tenancy. In the wake of the difficulties with the tenant, she also listed the rental unit for sale.

Among the grounds for evicting the tenant, Cebula claimed that the smoking in the unit created undue damage, causing it to smell of cigarette smoke. Her application to the board also argued that the smoking in the unit substantially interfered with her lawful right, privilege or interest as the landlord.

Cebula's agent, Allistair Trent, asked the board for damages exceeding $10,000 to repair the unit and replace the smoke-damaged furniture.

The hearing before board member Egya Sangmuah took place over the course of four days last June, October and November.

One of the issues argued before the board was whether the smell of smoke constitutes damage within the meaning of the Residential Tenancies Act.

The board found that cigarette smoke contains contaminants that are absorbed by the furnishings and broadloom, and are difficult to remove.

The tenant argued unsuccessfully that the breach of a non-smoking clause could not result in termination of the tenancy unless it interfered with the enjoyment of the unit by the landlord which did not apply in this case.

But Sangmuah found that the tenant or his guests permitted smoking in the unit, and that the landlord had incurred or will incur costs of $10,958.85 to repair the damage or replace property that was damaged and cannot reasonably be repaired.

The tenancy was terminated and the tenant was ordered to pay damages of $10,000 (the monetary limit of the board's jurisdiction), plus costs, interest and compensation for rent after the termination date.

The board ruled that the tenant's smoking did, in fact, interfere with the landlord's business of renting furnished luxury accommodation to a clientele of non-smokers.

The landlord's target market was individuals seeking short-term, smoke-free accommodation, and the board found that smoking in the unit reduced its marketability until the "remnants of smoke" could be permanently eradicated.

The lesson is that it is lawful to include a non-smoking clause in a residential lease.

If the smoking causes damage to the unit or interferes with the rights of the landlord or another tenant, the tenancy agreement will be terminated and the tenant may be held liable in damages.

Regular readers of this column may recall that I am on the boards of a landlord association and the Non-Smokers' Rights Association. In my view, the marketplace has room for rental accommodations that appeal exclusively to either smokers or non-smokers, or those with no preference.

CEBULA V. DAVIDSON REASONS

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