

Citation: *Sider v. Yukon Housing Corporation*, 2012
YKTC 18

Date: 20111213
Docket: 11-DC003
Registry: Dawson City
Heard: Whitehorse

IN THE TERRITORIAL COURT OF THE YUKON TERRITORY

Before: His Honour Judge Faulkner

IN THE MATTER OF THE *LANDLORD AND TENANT ACT*,
R.S.Y. 2002, c. 131 AND AMENDMENTS THERETO

BETWEEN:

ALAN A. SIDER

TENANT

AND:

YUKON HOUSING CORPORATION

LANDLORD

Appearances:

Alan Sider
Philippa Lawson

Appearing on his own behalf
Appearing for the Landlord

REASONS FOR JUDGMENT

[1] FAULKNER T.C.J. (Oral): This is an application by Alan Sider, who is a tenant in a housing unit owned and operated by the Yukon Housing Corporation in Dawson City. I gather Mr. Sider has been in that suite for some period of time.

[2] Initially, he was allowed to smoke in the unit, but subsequently the landlord purported to pass regulations which forbade smoking inside the rented premises.

There was a period of grace provided to existing tenants before that would come into effect.

[3] Mr. Sider has brought this application claiming that the landlord's non-smoking policy is unenforceable as regards to him because he has an existing Tenancy Agreement. He says, and he is quite right, that there is no provision in the original rental agreement with respect to smoking; and he is also quite right when he points to s. 17, which provides that changes to the Agreement must be agreed to by both parties, and, certainly, he has not agreed to the no smoking policy. However, what Mr. Sider has not dealt with is clause 6(m) of the Agreement which clearly authorizes the landlord and gives him the right under the Agreement to make regulations regarding the safety, care and cleanliness of the premises and the tenants. Smoking inside of the unit affects safety, affects the care, affects cleanliness, and it affects other tenants.

[4] Consequently, in my view, the landlord is perfectly within its rights under clause 6(m) to make the regulation in question.

[5] That is not the end of the matter because Mr. Sider also claims that the regulation, even if the Agreement permits it, is contrary to the *Charter of Rights and Freedoms*, R.S.C. 1985. He also submits that it interferes with his normal use of the rented premises. With respect to the normal usage of the rented premises, Mr. Sider may view it as an interference, but it is not the law that normal usage of rented premises necessarily includes the right to smoke therein, and restricting of smoking does not make the tenant, as Mr. Sider claims, somehow the property of the landlord.

[6] With respect to the *Charter*, I do not accept Mr. Sider's argument there. Smoking is not a right protected by the Canadian *Charter of Rights and Freedoms* nor does the *Charter* provide, as Mr. Sider suggests, that the law cannot be changed to restrict smoking if no such law existed at the time the *Charter* came into effect. That is simply not a correct interpretation of the *Charter* and, if one needs any proof, one can look at the fact that subsequent to the *Charter* coming into effect, a substantial body of statute law has been passed relating to the restricting of smoking, for example, in or near public buildings.

[7] So in the result, Mr. Sider, your application is dismissed.

FAULKNER T.C.J.