



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LADYSMITH SENIOR CITIZENS HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP, O

### Introduction

This hearing was scheduled to deal with a tenant's application for Orders to compel the landlord to address infiltration of cigarette smoke or marijuana smoke into her rental unit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

Is it necessary and appropriate to issue orders to the landlord?

### Background and Evidence

The tenancy in this rental unit commenced April 15, 2012. The landlord provides residential housing to low-income seniors. The residential property in which the tenant resides is a two-level four-plex with two units located on the ground level and two upper units. The tenant resides in an upper unit (#13).

The tenant submitted that shortly after her tenancy commenced she noticed smoke infiltrating her rental unit. The smoke makes her feel ill, her possessions smell, and to make it tolerable she opens her windows to air the unit out, even in winter months. The smoke in the tenant's unit is most concentrated in her bathroom and was smelled as recently as the night before the hearing. The tenant suspects the smoke comes from the unit directly below her (#11) as her neighbour in unit #12 does not smoke and unit #10 has been unoccupied for a few months.

The tenant submitted that the infiltration of smoke occurs nightly and becomes noticeable in her unit starting at about 8:00 p.m. and is at its worst at about 10:00 p.m. The tenant has observed that nearly every evening the tenant in #11 has a guests

arrive, usually a woman with a black/blue truck, or a man, and after the arrival of the guests is when the smoke infiltration begins.

The tenant submitted that she notified the landlord of the issue, the first time being in May 2012, but the landlord has not taken any action to remedy the situation.

The landlord acknowledged that he recalled two conversations with the tenant whereby she was complaining of smoke in her unit. The landlord stated that the rental units are sealed units, meaning they do not have central heating or air flow between units. The landlord does not believe smoke could pass from one unit to another when windows and doors are closed. The landlord also stated that he spoke with the tenant in #11 and she denied smoking in the unit. The landlord took the position there was nothing more he could do. The landlord viewed the tenant's numerous complaints about various issues in this unit and a former unit to be a nuisance and he was not prepared to attend the property to investigate the tenant's complaints further.

The landlord also submitted that in preparing for this proceeding the caretaker of the former tenant of #13 was contacted. She wrote a statement indicating that during the time she was a caretaker of the former tenant she did not notice smoke in the rental unit.

The landlord explained that the landlord is in the process of making the building smoke free; however, certain tenants are not subject to smoking prohibitions as their tenancies began before the smoke free terms were brought in. The tenant in unit #11 is one of the tenants not precluded from smoking in their unit under their terms of tenancy. However, the landlord understands that the tenant in unit #11 no longer smokes.

The tenant of #11 was called to testify. She confirmed that she was a smoker up until a few months ago. The witness testified that her boyfriend visits her nightly but that he has not smoked in 15 years. Other than her daughters that visit her during the day, she does not have any other female guests that visit in the evening. The witness testified that no person has smoked tobacco or any other substance in her unit for the past few months. The witness was agreeable to permitting the landlord to enter her unit upon request if the landlord receives another complaint of smoke in unit #13.

Upon discussion of possible remedies to this dispute, the parties were agreeable to taking the following steps:

1. If the tenant detects smoke in her unit again she is to call the landlord on his cell phone, up to 9:30 p.m. and request his attendance at the rental unit.

2. Upon receiving a phone call from the tenant, the landlord will make every reasonable effort to attend the rental unit in a timely manner, and bring a non-biased, non-smoking third party, as a witness.
3. Taking in to account the landlord and/or a witness may not be available on short notice, the tenant shall provide the landlord up to three occasions to fulfill the obligation under step no. 2.
4. If the landlord and/or the witness detects smoke in the tenant's unit the landlord shall request permission of tenant #11 to enter her unit for purposes of determining whether there is evidence of smoke in that unit.

### Analysis

Under the Act, a tenant is entitled to quiet enjoyment of their rental unit, including freedom from unreasonable disturbance or significant interference. A tenant is also entitled to live in a rental unit and residential property that complies with health, safety and building laws; and, is suitable for occupation, given the age, character and location of the property.

Where a tenant notifies a landlord that they are experiencing loss of quiet enjoyment due to actions of another tenant or another tenant's guests, or that repairs are needed to make the rental unit suitable for occupation it is expected that the landlord will take sufficient action to responding or investigate such complaints. Failure to take reasonable action or to sit idly by while another tenant's actions cause the tenant to suffer a loss of quiet enjoyment may be a basis to find a breach of the Act by the landlord.

In this case, it was undisputed that the tenant complained to the landlord that she was experiencing smoke infiltration in her unit on more than one occasion. According to the landlord the action he took was to enquire with the tenant in the unit #11. Upon the tenant in #11 denying that anybody was smoking in her unit the landlord took no further action. I find the landlord's decision not to investigate the tenant's complaints further and refusal to attend the property to deal with the tenant's complaints to be unreasonable in the circumstances. Rather, I find it reasonable that upon receiving further complaints from the tenant the landlord would attend the tenant's rental unit to determine if smoke is in fact infiltrating her unit and if so, to what extent and the likely point of entry. If so, then the landlord may determine what course of action is reasonable and necessary to comply with the Act.

Based upon the tenant's evidence, including verbal testimony and documentary evidence, I accepted the tenant may have experienced smoke in her unit and I did not

find it necessary to hear from her witnesses. However, based upon the disputed evidence before me, I found it less clear as to the origin or source of the smoke. I also find it reasonably likely that future instances of smoke infiltration may cease or be significantly reduced after this hearing.

In light of the above, I find the steps proposed during the hearing to determine whether smoke infiltration continues to be a problem to be appropriate in the circumstances and I make those steps an ORDER, to be binding upon both parties. I further ORDER the landlord to investigate the point of entry if smoke is detected in the rental unit. Should the smoke be originating from within the building the landlord must take sufficient action to block the airflow between units, and any other repairs or remedies necessary and appropriate to comply with the Act.

Failure to fulfill the orders contained in this decision form a basis to file a future Application for Dispute Resolution seeking further remedy.

### Conclusion

I have issued orders to both parties that are to be fulfilled should the tenant experience another instance of smoke infiltration in her rental unit.

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: March 07, 2013

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Residential Tenancy Branch

