



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC FF

### Introduction

This hearing dealt with an application by the tenant for an order that the landlord comply with the Act. The tenant, the landlord and an interpreter for the landlord participated in the teleconference hearing.

The landlord did not serve all of their evidence on the tenant. The only evidence of the landlord that is admissible is the two-page complaint letter from the downstairs tenants that the landlord did serve on the tenant. The landlord received the tenant's evidence, and the tenant's evidence is admitted. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issue(s) to be Decided

Should the landlord be ordered to comply with the Act?

### Background and Evidence

The tenancy began on November 1, 2006. The rental unit is an upper unit in a house, and the lower portion of the house is a separate unit occupied by different tenants under a separate tenancy agreement.

### *Tenant's Evidence*

New tenants moved into the downstairs unit in May 2012. The new downstairs tenants frequently smoked cigarettes and marijuana in their rental unit as well as just outside the house, and cigarette butts were littered around the house.

On December 9, 2012, the downstairs tenants had a party, and a fight ensued where the police were called. The tenant stated that on that date, there was so much smoke from downstairs that had come up into their unit that they felt like they were in a nightclub.

Since the tenant filed his application for dispute resolution, there has been a bit of a change, but even the night before the hearing the downstairs tenants were smoking marijuana near the house and the smell affected the upstairs tenant.

The tenant seeks an order requiring the landlord to ensure the tenant's quiet enjoyment of his rental unit, particularly ensuring that it is free from cigarette and marijuana smoke.

### *Landlord's Response*

The downstairs tenants do not have a no-smoking clause in their tenancy agreement. When the landlord received the upstairs tenant's complaint the landlord asked the downstairs tenants if they were smoking, and they denied smoking marijuana. The landlord asked the downstairs tenants to only smoke outside and to keep quiet. The landlord also talked to the upstairs tenant and told him that if the downstairs tenants are smoking marijuana, the upstairs tenant should call the police right away. Work has been done to clean up the cigarette butts.

### Analysis

I find that it is appropriate in this case to order the landlord to comply with section 28 of the Act. Under section 28, a tenant has the right to quiet enjoyment of their rental unit, free from significant interference or unreasonable disturbance. In this case, I accept that the upstairs tenant has suffered a reduction in the quiet enjoyment of his rental unit because of the significant amount of cigarette and marijuana smoke or odour in the upper unit, caused by the downstairs tenants' smoking.

As the tenant was successful in his application, he is entitled to recovery of the \$50 filing fee for the cost of his application.

### Conclusion

I hereby order the landlord to comply with section 28 of the Act. The landlord must ensure that the tenant has quiet enjoyment of his rental unit, free from significant interference or unreasonable disturbance.

The tenant is entitled to \$50, which he may deduct from his next month's rent.

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 8, 2013

---

Residential Tenancy Branch

