



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Westbank Lions Senior Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, PSF, O

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to provide services or facilities required by law, and other issues.

The tenant and agents for the housing society attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. Both Parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to provide services or facilities required by law?
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### Background and Evidence

The parties agree that this month to month tenancy started on April 01, 2009 and ended on May 08, 2013. Rent for this unit was \$396.00 per month.

The tenant testifies that that he suffered pain, nuisance and inconvenience due to second hand smoke filtering into the tenants unit from other tenants smoking in the building. The tenant testifies that there is now one grandfathered in smoker living in the building, one tenant who smoked has recently moved out of the building after the landlords gave that tenant an eviction notice; however two smokers remain in the building. One of these smokers lived directly above the tenants unit and the other smoker lived across the hall to the tenant. The tenant agrees the landlord has put up some no smoking signs around the building.

The tenant testifies that he has made numerous complaints to the landlord about other tenants smoking in their units. On one occasion the manager informed the tenant that he had received complaints about this problem from other tenants towards the end of April, 2013. The manager advised the tenant that he would speak to those parties concerned and resolve the issues. The tenant testifies that he has an allergy to smoke which causes serve migraines and sinusitis. The smoke filters in through the kitchen ventilation from the tenant above and through the other tenant's doors into the hallway. The manager may have put some weather stripping up around the tenant's doors to prevent smoke filtering into the hallway but when those tenants open their doors the smoke smell pervades the hallways. The tenant seeks to recover \$1,000.00 for this pain and suffering.

The tenant testifies that the landlord should have taken more action against the tenants that are smoking in their units to have the offending tenants removed from the building. Due to the landlords inaction the tenant testifies that he has had to move from the building. The tenant seeks to recover his moving costs from the landlord of \$200.00 for a company to remove his furniture and some personal effects and a further \$480.00 for

the tenant and a friend to move the remainder of the tenant's belongings. The tenant testifies that this work took the two men 12 hours to complete. The tenant testifies that he had been quoted a charge of \$75.00 per hour for two men and a moving truck so he and a friend did the work themselves.

The tenant testifies that he had to have his mail redirected and seeks to recover this cost of \$50.35 from the landlord. The tenant testifies that as this was only done a few days ago the tenant has not provided a copy of the receipt for this charge in evidence.

The tenant also seeks an order for the landlord to provide services or facilities required by law.

The landlord disputes the tenant's claims. The landlord testifies that whenever an issue arose with tenants smoking in their suites the landlord addressed each issue. The landlord agrees that one tenant is still a grandfathered in tenant and is allowed to still smoke in her suite. One tenant is on the same floor as this tenant but lives on the opposite side, one or two suites over and the third tenant that they have received complaints about lives two floors above this tenant. The third tenant, who was a smoker, was given a notice to vacate due to smoking and choose to move from the rental unit. The tenant living two floors above this tenant was investigated for smoking and the manager confirmed that that tenant had a nicotine patch and has stopped smoking in her unit. The manager testifies that he has been to that tenants unit and found no evidence of smoking taking place in that unit. The landlord testifies that the other tenant has been given a warning about smoking and this is still active. This tenant is monitored regularly to ensure she is not smoking in her suite.

The landlord testifies that the only written complaints about smoking have come from this tenant. The landlord agrees they have had some verbal complaints from other tenants and these complaints have all been acted upon. The landlord testifies that they gave the one tenant an eviction notice for smoking after receiving a verbal complaint from

a different tenant living in a unit above that tenant. The landlord testifies that this action shows the landlords do act on every complaint.

The landlord testifies that it is impossible for smoke to filter into the hallways as the hallways are pressurised and this cooling /heating unit is on all the time unless it requires maintenance or it is turned from heating to cooling twice a year. The landlord testifies that they have done their due diligence when receiving a complaint about tenants smoking; a designated area for smokers is outside, signs have been posted around the building and there is a strict no smoking policy in place which tenants must sign. If a tenant is found to be smoking in their suite they receive three warnings and then an eviction notice. The landlord testifies that the tenant has never invited him into his suite to smell the alleged smoke and when the landlord has been in the tenant's suite he has never smelt smoke in there. The landlord states they therefore dispute the tenants claim in its entirety.

The tenant disputes the landlord's claim that the cooling/heating system is on all the time. The tenant testifies that he has found that the system is off on occasion possibly on a timer.

The parties presented other evidence that was not relevant to my decision or the tenants claim. I looked at the evidence that was relevant and based my decision on this.

### Analysis

With regard to the tenants claim for a Monetary Order for compensation due to having to move from the rental unit because of smokers; the tenant has stated that this second hand smoke severely affected the tenant's health due to an allergy to smoke. The tenant has provided documentation from a doctor regarding the tenant's allergic reaction to smoke. The landlord argues that they have done their due diligence and they enforce their non smoking policy as recently shown by the eviction notice given to one of these tenants who was found to be smoking.

Having reviewed the documentary evidence and the testimony before me I find the burden of proof falls to the tenant to show that the landlord has not acted diligently in preventing those tenants not grandfathered in to stop smoking in their suites. Having considered both arguments in this matter I am satisfied that the landlord has acted diligently when complaints have come in from tenants either verbal or written concerning other tenants smoking in their suites. If a landlord gives a tenant a one Month Notice to End Tenancy for cause for smoking a landlord must have sufficient evidence to show that the offending tenant has been smoking in their suite and therefore not complying with the non smoking policy. A landlord must also provide warnings to that tenant prior to serving a Notice to End Tenancy. I am satisfied that the landlords have investigated concerns and provided warnings to those tenants smoking in their suites.

While I sympathies with the tenant's health concerns and allergies to second hand smoke, I further find the landlord has followed their own procedures in order to evict another tenant for smoking. It would be unreasonable for a tenant to expect a landlord to 'police' all tenants around the clock to gain sufficient evidence to be able to evict another tenant and a landlord often has to rely on complaints from other tenants. I am satisfied that when the complaints have come in the landlord has acted upon them. I therefore find the tenants claim must be dismissed as the tenant has no evidence to show that the landlord has been negligent or remise in enforcing their no smoking policy. The tenants claim therefore for compensation for moving costs, for pain and suffering and for redirection of mail must be dismissed without leave to reapply.

For the same reason I must also dismiss the tenants application for an Order for the landlord to provide services or facilities required by law.

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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: June 03, 2013

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Residential Tenancy Branch

