



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sunshine Coast Lions Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC OLC RP FF O

### Introduction

This hearing convened pursuant to the tenant's application for monetary compensation, an order for repairs and an order that the landlord comply with the Act, regulation or tenancy agreement. At the outset of the hearing the tenant stated that she no longer required an order for repairs to her shower stall. I therefore dismissed that portion of the tenant's application.

The tenant, the landlord's agent, counsel for the landlord and one witness for the landlord participated in the teleconference hearing. At the outset of the hearing, each party confirmed that they had received the other party's evidence. Both parties indicated that they were prepared to proceed, and they were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Preliminary Issue

The tenant named two entities as respondents in her application; however, only one of these entities is named as the landlord in the tenancy agreement. The tenant agreed to an amendment of her application to remove the second named respondent, and I have so amended the application.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation?

Should I order the landlord to comply with the Act, regulation or tenancy agreement?

## Background and Evidence

The tenancy began on January 18, 2012. The rental unit is an apartment on the third floor of a four-floor building. The first and second floors are designated for rent geared to income and tenants with mental health and addictions issues. The third and fourth floors are designated for seniors aged 55+. All occupants of the building have signed the landlord's no-smoking policy, which forms an addendum to their tenancy agreements. In August 2013 the landlord built a smoking shelter on the property.

## Tenant's Evidence

The tenant's application addressed three issues: loss of quiet enjoyment due to second-hand smoke; misrepresentation by the landlord; and failure to repair the tenant's shower stall in a timely manner.

### *Second-Hand Smoke*

The tenant presented evidence that she has been negatively affected by second-hand smoke entering her rental unit, on a nearly daily basis. The tenant stated that she suffers headaches and nausea from the smoke, and she also has health concerns because she has already had three cancers. The tenant's evidence was that cigarette smoke and marijuana smoke come into her unit, as a result of other tenants smoking on their balconies, near the building or even in the smoking shelter, where the tenant is sometimes exposed to the smoke from four or five smokers at one time. The tenant stated that she informed the landlord in writing of the problem, and offered to meet with the landlord to resolve the problem, but the landlord did not respond or investigate. The tenant has claimed \$18,600 in compensation for the landlord's failure to address this problem and for the tenant's resultant loss of quiet enjoyment for 653 days of occupation in the unit.

### *Misrepresentation*

The tenant presented evidence that the landlord misrepresented the rental building to the tenant by failing to disclose that part of the building was occupied by tenants who were not aged 55+ and who qualified for their unit based on financial barriers or mental health and addictions issues. The tenant stated that she would not have taken the rental unit if this information was made clear to her. The tenant has claimed \$2000 for her moving costs to move into the rental unit.

### *Shower Stall Deficiency*

The tenant has claimed compensation of \$495 for the landlord's failure to repair the tenant's shower stall for the first 22 months of the tenancy. The tenant has calculated this amount based on three percent of her monthly rent for 22 months. The tenant submitted a copy of the move-in condition inspection report dated x, which indicates that there was no enclosure for the shower at that time. The tenant also submitted letters dated December 4, 2012 and x, which she submitted to the landlord requesting that her shower be repaired.

The tenant also claimed \$130 for mailing, copying and other costs related to the dispute resolution process.

### *Landlord's Evidence*

#### *Second-Hand Smoke*

The landlord's response was that they enforce the no-smoking policy in the building, and they built the smoking shelter to prevent the smokers from smoking next to the building. The landlord stated that the first time the tenant complained to the landlord in writing about the issue was July 18, 2013, and the landlord directly addressed the tenants' concerns within two weeks. The landlord has been posting no-smoking notices and enforcing the no-smoking policy. The landlord stated that they have a three-strikes-you're-out policy regarding smoking, and they have been following up on breaches of the no-smoking policy. The landlord submitted copies of three warning letters regarding smoking, dated May 30, 2013, July 9, 2013 and December 6, 2013. The letters do not identify the tenant or rental unit.

#### *Misrepresentation*

The landlord stated that the principle of "buyer beware" should apply. The tenant could have asked about who was housed in the building but she did not, and "your neighbours are going to be your neighbours."

### *Shower Stall Deficiency*

The landlord acknowledged that the tenant's shower stall was not repaired until early December 2013. The landlord submitted that the reason the tenant's shower stall was not repaired until this time was that the landlord is a non-profit society on a limited

budget, and contractors were unwilling until recently to provide a large number of uninstalled doors.

### Analysis

Upon consideration of the relevant evidence, I find as follows.

#### *Second-Hand Smoke*

Under section 28 of the Act, tenants are entitled to quiet enjoyment, including freedom from unreasonable disturbance. When a tenant's quiet enjoyment of their rental unit is adversely affected by the unreasonable actions of other occupants or their guests, the landlord has a responsibility to take steps to address the issue, and may be required to compensate the tenant for their loss of quiet enjoyment. In this case, I accept the tenant's evidence that she has been adversely affected by the effects of second-hand smoke entering into her rental unit. However, I also find that the tenant has not provided sufficient evidence to establish that the landlord breached section 28 of the Act by not taking reasonable steps to address this issue. The landlord's evidence shows that they have given warnings to tenants who have violated the no-smoking policy, and they have taken additional steps to attempt to deter smokers from smoking in or near the rental building. I therefore find that the tenant is not entitled to compensation as claimed for loss of quiet enjoyment; additionally, I do not find it necessary to order the landlord to comply with section 28 of the Act.

#### *Misrepresentation*

I find that the tenant was responsible for enquiring about the rental building, and she made the choice to enter into the tenancy. I do not find that the landlord misrepresented the building. The tenant is not entitled to compensation for her costs to move into the rental unit.

#### *Shower Stall Deficiency*

I find that the landlord was negligent in their duty to repair the shower stall deficiency, and they were aware of the deficiency at the outset of the tenancy, as noted in the move-in condition inspection report. I find that the tenant's claim of \$495 is reasonable, and I grant the tenant this amount.

*Other Costs*

The Act does not allow for recovery of costs related to the dispute resolution process, except for the filing fee. As the tenant was only partially successful in her application, I find she is entitled to partial recovery of her filing fee, in the amount of \$50.

Conclusion

The tenant is entitled to \$595. The tenant may deduct this amount from her next month's rent.

The remainder of the application is dismissed.

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: January 27, 2014

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Residential Tenancy Branch

