



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC FF

### Introduction

This hearing dealt with the tenant's application for an order that the landlord comply with the Act, regulation or tenancy agreement. Both the tenant and the landlord participated in the teleconference hearing.

At the outset of the hearing, the landlord confirmed that he received the tenant's application and evidence. The landlord did not submit any documentary evidence. Both parties 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.

### Issue(s) to be Decided

Should I order the landlord to comply with the Act?

### Background and Evidence

The tenancy began on July 1, 2013. The rental unit is the upper unit in a house; the lower unit is occupied by other tenants in a separate tenancy agreement with the landlord.

### *Tenant's Evidence*

The tenant stated that he has been suffering from tobacco smoke which he believes is coming into his unit from the lower unit. The tenant served the landlord with complaint letters on October 15, 2013, October 30, 2013 and November 30, 2013. The tenant stated in the hearing that the landlord didn't do anything about the complaints. In his evidence the tenant submitted a copy of a doctor's note, in which the tenant's doctor indicates that the tenant suffers from breathing problems, and advises the tenant to minimize any smoke exposure. The tenant also submitted a log indicating numerous

times and dates between October 29, 2013 and December 2, 2013 that the tenant smelled smoke.

### *Landlord's Response*

The landlord stated that he talked to the downstairs tenants, who said they are not smoking and they will do anything to prove they are not smokers. The landlord stated that he told the tenant to call the landlord if he smelled smoke and he would check. On two occasions the landlord or his wife went into the common area of the basement within five minutes after the tenant complained of the smell of smoke, and they did not smell anything.

### Analysis

I find that in this case it is appropriate to order the landlord to comply with section 28 of the Act, which requires landlords to provide to tenants quiet enjoyment of their rental unit.

I find that the landlord did not take adequate steps to investigate the tenant's complaints. If a tenant is complaining about the smell of cigarette smoke in his unit, the landlord ought to attend at the tenant's unit to assess whether there is a smell of smoke in that unit. It is then up to the landlord to determine what steps to take, based on his investigation. If the tenant is dissatisfied with the outcome, the tenant may wish to make a further application for dispute resolution or take other steps such as end their tenancy by entering into a mutual agreement to end tenancy with the landlord.

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

### Conclusion

I hereby order the landlord to comply with section 28 of the Act and take reasonable steps to ensure that the tenant has quiet enjoyment of his rental unit.

The tenant may deduct \$50 from his next month's rent, representing recovery of his \$50 filing fee.

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: April 8, 2014

---

Residential Tenancy Branch

