



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LUTHERAN MANOR SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      OLC

### Introduction

This hearing dealt with the tenant's application pursuant to section 62 of the *Residential Tenancy Act* (the *Act*) for an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's female representative (the landlord) confirmed that on August 4, 2014, the landlord received a copy of the tenant's dispute resolution hearing package sent by registered mail. The parties also confirmed that they sent and received one another's written evidence packages. I am satisfied that the parties served the above documents to one another in accordance with the *Act*.

In an Addendum to the Details of the Dispute section of the tenant's application for dispute resolution, the tenant described her concerns about the landlord's failure to take adequate measures to ensure that cigarette smoke is prevented from infiltrating her rental unit.

The tenant's written evidence identified additional concerns about the landlord's actions, including concerns about an air freshener placed in a common area of the rental property and the lack of painting of her rental suite. The tenant confirmed that the air freshener has been removed from the common area and is no longer an issue. During this hearing, the tenant withdrew her request to have the painting issue considered as part of her application. As this matter was not included in her application for dispute resolution and the tenant withdrew her request to have it considered as part of this hearing, I advised the parties at the hearing that the tenant's concerns regarding the painting of her rental unit are not currently before me.

### Issues(s) to be Decided

Should any orders be issued to the landlord with respect to this tenancy?

### Background and Evidence

This periodic tenancy in a subsidized rental building began on December 1, 2013. The tenant's portion of the monthly rent is set at \$320.00, payable in advance on the first of each month. The parties agreed that the tenant signed a statement on December 1, 2013 confirming that she acknowledged receipt of the Rules of the non-profit society governing the operation of this rental building (the Rules of the building). The landlord gave undisputed sworn testimony that every

tenant in this 35 year old multi-family rental building signed an acknowledgement that they would abide by these Rules.

The tenant testified that she understood that smoking was not allowed in this building when she commenced her tenancy. She noted that there is a no smoking sign at the front of the building. She maintained that despite her frequent requests to the landlord's representatives, cigarette smoke continues to enter her suite on an ongoing basis. Although she initially believed that the smoke was stemming from a tenant in Unit 204 of her building, smoke continues to enter her building from other sources even after the landlord has taken action with the tenant in Unit 204. She testified that a tenant near her smokes on his balcony, contrary to the building rules. She also stated that some tenants smoke in the car parkade, which has exhaust fans that may be distributing smoke to her rental unit.

The tenant maintained that the landlord has not adequately enforced Rule 37 which reads in part as follows:

*37. The (building) has been designated a Non-Smoking Building. Smoking anywhere in the building other than a tenant's suite is prohibited. Tenants who smoke must ensure that smoke from their suites does not carry through to other parts of the building, causing discomfort and possible injury to other tenants. Tenants are not allowed to smoke on the balcony as the smoke travels to nearby units...*

The tenant requested an order requiring the landlord to take the following actions to address her concerns about cigarette smoke entering her rental unit:

- The landlord should print and leave notices to all tenants in the building advising them that smoking is not allowed on balconies, in rental suites and in the car parkade.
- The landlord should also speak with each smoker in the building advising them of the above rules.

The landlord testified that she has sent two written notices to the tenant in Unit 204 advising him of the complaint that his cigarette smoke was bothering another tenant in the building. She testified that the tenant in Unit 204 was now restricting his smoking to a location at some distance from the building. The landlord also testified that smokers are asked to smoke at least 10 feet from the building and many smoke much further away from the building than that distance. She entered undisputed written evidence that the rental building was not listed as a "no smoking building." She said that the signs at the front of the building establish that smoking is not allowed in any common areas of the building, which conforms with each tenant's signed acknowledgement that they have received and will comply with the Rules of the building, including Rule 37. The landlord testified that this ageing building is by no means air-tight and smoke and odours from cooking, etc., do enter the building. She said that the non profit society operating the building does attempt to reduce smells from escaping from one rental unit to another to the extent possible and encourages tenants to use properly operating bathroom fans which help to circulate air. The landlord said that there are many long-term tenants in this

building who commenced their tenancies with the understanding that they would be allowed to smoke inside their rental units.

### Analysis

The tenant's written evidence maintained that the landlord was not protecting her right to quiet enjoyment of the premises, a protection outlined partially as follows in section 28 of the *Act*:

**28** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:...*

*(b) freedom from unreasonable disturbance;...*

*(d) use of common areas for reasonable and lawful purposes, free from significant interference.*

While the tenant has maintained that her asthmatic condition and quiet enjoyment of the rental unit has been compromised by the entry of second-hand cigarette smoke into her rental unit, she has not provided any evidence from a health care professional attesting to any deterioration in her condition arising out of such exposure. When the tenant was able to identify a specific individual, the tenant in Unit 204, who she believed was the source of the cigarette smoke entering her rental unit, the landlord took effective action to address her concerns. The tenant gave sworn testimony that until this hearing she had not contacted the landlord with specific complaints about tenants smoking on their balconies. At the hearing, the landlord testified that if specific complaints were raised about this contravention of the Rules of the building, the landlord would attempt to investigate and take corrective action.

While I accept that the tenant may have genuinely believed that the no smoking notice on the window of the common area at the front of the building meant that this was a "no smoking building," she signed a document on November 20, 2013, before she moved into this building, acknowledging that she understood the Rules of the building. As noted above, these Rules included Rule 37, which states that the designation of this building as a Non-Smoking Building did not prevent tenants from smoking within their own rental suites. I find that the tenant's signed acknowledgement that she understood the Rules of the building which included a specific description of the smoking restrictions within the building is at odds with the tenant's claim that she understood that smoking was not allowed anywhere in the building, including the rental suites. As I heard undisputed sworn testimony from the landlord that all tenants in the building have signed a similar acknowledgement that they have received and understood the Rules of the building, including Rule 37, I find that I am in no position to issue an order to the landlord to prohibit smoking in all rental suites in this building. To issue such an order would have the effect of changing the terms of the tenancy agreements of everyone in this building, and reducing the value of those tenants who expected to be allowed to smoke inside their rental units.

Rule 37 also contains a statement that tenants who do choose to smoke in their suites “must ensure that smoke from their suites does not carry through to other parts of the building, causing discomfort and possible injury to other tenants.” Although I dismiss the tenant's request for the imposition of an absolute ban on smoking within all areas of this building, the tenant also maintained that the landlord is not taking adequate steps to ensure that tenants are abiding by the above-noted requirement of Rule 37 so as to prevent her from experiencing the consequences of second-hand cigarette smoke in her rental unit. After carefully considering this portion of the tenant's claim, I find that the tenant has failed to provide sufficient evidence that would demonstrate that she has suffered “possible injury” as a result of the actions of tenants who may be smoking in their rental units. However, she is clearly bothered by the presence of second-hand cigarette smoke in her rental unit and has identified a number of possible sources for the discomfort she is experiencing.

Under these circumstances, I have taken into consideration that this is an older rental building, which the landlord admitted is by no means air-tight. When the tenant has been able to identify a specific source of cigarette smoke, the landlord has taken adequate corrective action. Tracing the source of second-hand cigarette smoke is challenging for both the tenant and the landlord. At the hearing, the tenant stated that the smoke may be originating from any or all of the following:

- tenants smoking on their balconies;
- tenants smoking in the car parkade;
- tenants smoking in their rental suites.

I recognize that it may be difficult to report smoking infractions to the landlord quickly enough to obtain a witness to smoking on balconies and in the car parkade. However, at the hearing, the landlord presented as willing to investigate specific allegations of this nature when they are raised by tenants in this building. The tenant testified that she has not provided details of incidents of smoking in these prohibited locations to the landlord. The tenant was also unable to identify anyone other than the tenant in Unit 204 whose smoking within a rental unit may be causing discomfort to her. Without any specifics of this nature, I find that the tenant has not established that the landlord has been remiss in following up on allegations that Rule 37 has been contravened. Rather, it would appear that the tenant is seeking a more widespread smoking ban within the rental suites in this building, a ban which was not in place when either the tenant or other tenants in this building commenced their tenancies. Based on the evidence before me, I am not satisfied that the tenant has provided sufficient evidence to warrant the issuance of an order prohibiting smoking from all parts of this building, including within rental suites.

Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenants who are entitled to the same protections, including the right to quiet enjoyment and the provision of the services and facilities the landlord committed to provide when the tenancy began. Other

tenants in the building are also entitled to the landlord's adherence to the contractual obligations established between those other tenants and the landlord at the time that their tenancies were established.

Although I am sympathetic to the tenant's situation, I find insufficient evidence to demonstrate the need for the issuance of an order requiring the landlord to take additional action to enforce Rule 37, the smoking restrictions for this rental property. When the tenant identified the tenant in Unit 204 as the source of her discomfort, the landlord took effective action to address her concerns. While this action may not have resulted in the improvement in air quality the tenant was seeking, until this hearing the tenant had not notified the landlord of any other specific tenant whose actions were allegedly in contravention of Rule 37. Under these circumstances and for the reasons outlined above, I dismiss the tenant's application for the issuance of an order regarding the current situation surrounding smoking in this rental building without leave to reapply.

Should the tenant have specific allegations regarding contraventions of the existing Rule 37 of the Rules of the building, the tenant is at liberty to bring these to the attention of the landlord.

#### Conclusion

I dismiss the tenant's application for dispute resolution regarding contraventions of the existing smoking restrictions in this rental building 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: October 02, 2014

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Residential Tenancy Branch

