



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wedgeewood Arms Apts.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FF, MNDC, O

### Introduction

This is an application for a monetary order for \$2000.00, and recovery of the \$50.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

Has the applicant established monetary claim against the respondent, and if so in what amount?

### Background and Evidence

This tenancy began on March 1, 2014 with a monthly rent of \$650.00.

This tenancy ended on June 30, 2014 and the full security deposit of \$325.00 has been returned to the tenant.

The tenant is alleging that she had a significant loss of use and enjoyment of the rental unit during her tenancy, and as a result lost a significant amount of employment income, and had costs for medications and treatments.

The applicant testified that:

- This building is advertised as a non-smoking building, and the tenancy agreement states this is a non-smoking building, however people were smoking in the building and as a result the cigarette smell became unbearable in the whole building.
- When I asked the landlord to deal with the smoking problem, the landlord told me there were no laws for him to do anything about the smoking.
- There was also unusually high activity in the doorway and stairwell adjacent to her suite between midnight and 4 to 5 AM in the morning. People were coming and going over and over, slamming doors and thumping up and down the stairwell.
- As a result of the smoke smell in the building and the constant noise of slamming doors and people thumping on the stairwell she was unable to get any sleep, which resulted in her missing approximately 17 days of work causing a significant loss of income. She does not know the exact amount of hours that were lost, as she was on call and therefore the hours may have differed on different days.
- She also had costs for purchasing homeopathic medicines and the cost of treatments.
- The sleep deprivation making her both physically and mentally sick, and she was forced to spend many nights at a friend's place to try and get some rest.
- She is therefore requesting that the landlord compensate her \$2000.00 for loss of use and enjoyment of the rental unit, as she believes that the landlord was negligent in failing to deal with these significant issues.

The respondent testified that:

- He took numerous steps to attempt to deal with the applicant's complaints.
- He informed everyone in the building that it was a no smoking building and that all smoking must be done on balconies only.
- Everyone he spoke with assured him that they would only be smoking on their balconies
- He also spoke to everyone on the tenant's floor to try and assure that none of them were slamming doors or thumping down the stairs in the middle of the night, and every single person assured him that they were not.
- He also put a notice in the monthly bulletin asking all people to be considerate of others and ensure that they do not slam doors or thump on stairs when entering or exiting the building.
- He believes he did everything reasonable to try and resolve the issues that the applicant had reported to him.
- Further, he believed all the issues had been resolved after he had spoken to the other tenants, as he had no further complaints until after the tenant gave an improper Notice to End Tenancy, and he informed her that she must give the proper Notice to End Tenancy.
- He believes this application should be dismissed.

### Analysis

It is my finding that the applicant has not shown that the landlord was negligent in his dealings with her complaints.

I find that the landlord took reasonable steps to try and resolve the issues of possible smoking in the building, and of noise from the door and stairwell adjacent to the applicant suite.

It's unfortunate that the applicant was disturbed by the comings and goings of other tenants through the door and stairwell adjacent to her suite, however the other occupants of the building have the right to come and go from the building as they wish, and I fail to see how the landlord could do anything further than request that the other occupants be considerate by closing doors quietly and going down the stairs quietly.

It is also unfortunate that the applicant found the smell of cigarette smoke so disturbing, however it is also my finding that the landlord took reasonable steps to ensure that other tenants were not smoking in the building, and since smoking was allowed on the balconies, it's highly possible that the smoke was entering from outside the building.

Further, the applicant has also failed to provide any evidence to support her claim that she had a loss of income, or that she had any costs for medications or treatments.

Therefore in light of the fact that the applicant has not met the burden of proving that there was any negligence on the part of the landlord, or that she suffered any financial loss, I will not order any compensation be paid by the respondent to the applicant.

### Conclusion

This application is dismissed in full 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: February 16, 2015

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Residential Tenancy Branch

