



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Terra Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

MNDC, OLC

### Introduction

This hearing dealt with an application by the tenant for a monetary order and an order compelling the landlord to comply with the Act and tenancy agreement. Both parties participated in the conference call hearing.

The parties were previously involved in a dispute resolution hearing which took place on May 1, 2014 (the “First Hearing”) and addressed the same issues occurring up to the date of that hearing. In a decision dated May 30, 2014, the Arbitrator dismissed the tenant’s claim “with leave to reapply if there are future problems with smoking and the landlord fails to address them appropriately.” I take this statement to mean that the tenant had leave to file the same application seeking compensation for losses occurring after the date of the First Hearing. I therefore dismiss the tenant’s claims for compensation for the period prior to May 1, 2014. The hearing dealt exclusively with the tenant’s claims for losses incurred after that date.

### Issues to be Decided

Is the tenant entitled to compensation?

Should the landlord be ordered to comply with the Act and tenancy agreement?

### Background and Evidence

The tenancy in question is of approximately 20 years duration. At the time the tenancy began, the building in which the apartment rental unit is situated permitted tenants to smoke in their suites. The building has gradually transitioned to a non-smoking building and the tenant, a non-smoker, had enjoyed living in a smoke free environment. The tenant testified that she has health problems which include an issue with her heart and chronic obstructive pulmonary disease which is aggravated by smoke.

In October 2013, the suite next to the rental unit was rented to a new tenant who shall hereinafter be referred to as the “Neighbour”. The Neighbour’s tenancy agreement provided that he was prohibited from smoking in the suite. The tenant testified that several times over the following months, marijuana smoke entered into her unit from that of the Neighbour. The tenant filed complaints with the landlord and eventually filed an application for dispute resolution with

the Residential Tenancy Branch seeking compensation, which was the subject of the First Hearing. The Arbitrator in the First Hearing found as follows:

- The tenant had been inconvenienced by marijuana smoke on several occasions;
- The landlord acted appropriately in addressing the issue; and
- The tenant could seek compensation should there be future breaches.

The tenant testified that since the First Hearing, she has smelled marijuana smoke daily and that it usually comes in the early hours of the morning between 3:00 and 5:00 a.m. She stated that the smell is so overpowering, she is unable to sleep and must retreat to her balcony. The tenant believes that the smoke is coming into her unit from the exhaust ducting over her range. She testified that she complained repeatedly to SW, the building manager, but SW advised that she has a poor sense of smell and cannot detect marijuana smoke. SW advised the tenant to contact the non-emergency number for the police. The tenant testified that she has summoned the police, but because the issue is not an emergency, the smoke is undetectable by the time police arrive.

The tenant provided a letter from a friend, SP, who stated that at some point prior to the date of the letter, August 29, 2014, she was at the rental unit at 10:00 p.m. and smelled marijuana.

The tenant claimed that the Neighbour has also severely frightened her. She testified that she has received several telephone calls in which the calling party does not identify themselves and does not speak. She believes that the Neighbour has initiated those calls. She further testified that on one occasion she received a telephone call from a man who did not identify himself but said that if she had him evicted, he would "slit [her] throat from ear to ear". The tenant testified that she telephoned the police and reported the incident to the landlord, but because the party did not identify himself, there was nothing they could do. She further testified that the Neighbour follows her around the building, to the garbage room and to the laundry room. The tenant stated that she is terrified of the Neighbour.

The tenant testified that she believes the Neighbour vandalized her scooter by breaking the mirror and stole the charger. She stated that because she believes the Neighbour wants to vandalize her belongings, she has kept her scooter on the 10<sup>th</sup> floor and she believes he found it and took the charger, leaving it on the stairwell between the 6<sup>th</sup> and 7<sup>h</sup> floors.

The landlord testified that to their knowledge, the Neighbour has not been smoking marijuana in the rental unit. The landlord indicated a willingness to act to evict the Neighbour in the event he was found to breach the no-smoking term in his tenancy agreement, but the neighbour has denied having smoked since January 2014 and they have no persuasive evidence to show that he has continued. The landlord testified that the Neighbour has told him that he has stopped smoking and is now ingesting marijuana, which he uses for medical purposes, through cookies.

The landlord testified that in February 2014, the tenant reported that her hood fan was not functioning properly. Upon inspection, the landlord's repairman discovered that a metal panel

which should have been removed upon installation had remained in place and effectively blocked off the fan. The landlord asserted that smoke could not have entered the tenant's rental unit through the hood fan prior to the time the metal panel was removed and even afterward it would not have occurred as the hood fans are vented to the exterior of the building rather than sharing common ventilation ducts.

The landlord testified that on one occasion, the tenant left a voicemail indicating that she had detected the odour of marijuana the night before, but that the Neighbour was away from the unit at the time on an extended hospital stay.

The landlord provided letters from another occupant of the building, CM, who stated that the tenant had implied that CM had damaged the mirror on her scooter. Another occupant, TS, stated that the tenant slandered the Neighbour to her and asked her to tell her lawyer that the Neighbour had spoken derogatorily of the tenant, made threats about her and behaved in a threatening matter toward TS.

The tenant stated that TS's statement was exaggerated and CM's statement focused on tangential issues.

The tenant seeks to recover 65% of the rent she has paid from May 2014 – March 2015 in compensation for loss of quiet enjoyment. The landlord asked that the tenant's claim be dismissed and that she be ordered to direct further complaints to the police as the landlord believes the police are in a better position to address complaints about marijuana odours. The landlord further requested that the tenant be directed to communicate with the landlord exclusively in writing in the future with respect to these complaints.

### Analysis

The tenant bears the burden of proving her claim on the balance of probabilities. I accept that the tenant may have detected the odour of marijuana while in the rental unit on occasion. However, I am not persuaded that the odour is as frequent or as severe as she claims nor am I persuaded that the Neighbour is the source or at least the sole source of the problem.

I find that the tenant has exaggerated the frequency with which she has been exposed to smoke. There appears to be at least one instance in which the smell of smoke was verified by a third party, SP. She claimed that she has been exposed daily to this odour, yet none of the other occupants of the residential property have noticed any odour nor have any other witnesses confirmed the extent and frequency of the smoke problem. Further, the tenant complained about the smell of smoke at a time when the Neighbour was not in the neighbouring unit.

The landlord testified that the units are vented to the outside and ducting is not shared between units, so it is not possible that smoke is traveling directly from the Neighbour's unit to that of the tenant. The tenant was unable to provide evidence that she shares ducting with the Neighbour and I find that the only way smoke could be entering her unit through the ducting is if it comes

from the outside. However, the tenant testified that she goes outside to escape the smell of smoke, which suggests that the smoke cannot be coming from outside. There is on the tenant's evidence, no apparent source of the smoke other than her suspicion that a person who has admitted to twice smoking marijuana in his unit is continuing to do so.

The tenant has an obligation to make her complaints as detailed as possible in order to allow the landlord to conduct a meaningful investigation. The tenant appears to be determined to complain about the Neighbour but has not in this action provided sufficient evidence to show that the Neighbour is actually the source of the problem. If the tenant is smelling smoke in her unit, it is possible that it is coming from a different source.

I am not satisfied that the Neighbour has threatened the tenant or vandalized her personal property as there is no evidence to corroborate the tenant's claim that this is the case. The letters provided by the landlord and authored by other occupants suggest that the tenant has suspected other people of having vandalized her scooter and also suggest that the tenant is encouraging other occupants to make statements about the Neighbour which are untrue.

The tenant has not provided sufficient evidence to establish a monetary claim as I am not persuaded that she has lost quiet enjoyment to the degree claimed or that she has acted reasonably in reporting the issue as she has directed all of her complaints toward the Neighbour who I am not satisfied is the source of the problem, if there is indeed a problem.

However, I find that she has established that the landlord has not acted reasonably in investigating her complaints. The landlord's resident manager is anosmic, meaning she is unable to detect odour. The landlord cannot competently investigate complaints about odours when the agent appointed to do so is not capable of detecting odour. The police are not obligated to determine the source of odours to benefit the landlord or the tenant and to use the police force in such a way is a misuse of that public service. The landlord is obligated to have an agent available who can detect odours and I find it appropriate to order the landlord to appoint an agent with that capability who can make themselves available to investigate the tenant's complaints. I remind the tenant that if an agent who is capable of detecting odours cannot perceive an odour about which the tenant is complaining, the tenant should consider that the odour is either not present or not strong enough to be readily detected. Repeated complaints which result in no perception of an odour may constitute an unreasonable disturbance of the landlord and may jeopardize the tenancy.

The landlord requested that I order the tenant to communicate exclusively in writing in the future. I decline to make that order for 2 reasons. First, the landlord does not have an application before me. Second, the tenant has described the odour as occurring daily, but only for a short period of time, which means that it would not be helpful for her to request an investigation in writing as the odour would have long since dissipated by the time the landlord received the written request. The tenant would be well advised to keep a written log of those times in which she experiences discomfort resulting from the odour and should share that log with the landlord, but is not required to restrict her reports or complaints to writing.

Conclusion

The claim for a monetary order is dismissed. The landlord is ordered to appoint an agent who is capable of perceiving odour to investigate further complaints.

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 2, 2015

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Residential Tenancy Branch

