



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to have the landlord comply with the Act, regulations, or tenancy agreement.

The tenant attended the hearing. As the landlords did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on November 9, 2016, Canada post tracking numbers were provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlords have been duly served in accordance with the Act.

Further, the landlords filed in evidence a response to the tenant's application.

### Issue to be Decided

Should the landlord be ordered to comply with the Act?

### Background and Evidence

The parties entered in to fixed term tenancy that began on September 1, 2016 and expires on December 31, 2016. Rent in the amount of \$675.00 was payable on the first day of each month. The tenant paid a security deposit of \$337.50.

The tenant testified that the occupant that lives above their rental unit is allowed to smoke dope inside their rental unit. The tenant stated that the smells of the dope enters their rental unit and makes them cough and gives them headaches. The tenant stated they are not sure how the smells enter their rental unit.

The tenant testified that their tenancy agreements indicated that they are not allowed to smoke in the rental unit; however, smoking on the balcony is permitted. The tenant acknowledged that they are a smoker and that they smoke on their own balcony directly below the occupant.

Filed in evidence by the tenant is a letter dated September 15, 2016, which in part reads,

“... he uses a variety of stuff. Some smells like bacon with chemicals. Some is almost odorless....”

[Reproduced a written.]

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenant does not live in a smoke free building. New tenants are not permitted to smoke in the rental unit, and smoking is permitted on the balcony. I find that reasonable when the landlords are working towards a smoke free building. Existing occupants may not be required to comply with new policy.

The evidence of the tenant was that the occupant above them is allowed to smoke dope. I find it reasonable to conclude that this dope is cannabis. However, the tenant provided no evidence that the smell of cannabis is anymore offensive than the smell of cigarette, which the tenant smokes on their balcony below the occupant.

The tenant provided no medical evidence that the smell of cannabis is harmful to their health. Coughing and headaches maybe related to their own smoking or other medical conditions.

Further the smell of bacon with chemicals and other smells that are almost odorless are not evidence that there is a drug problem in the upper unit that is significantly interfering with the tenant's rights. This simple could be normal household smells coming from other rental units, such as cooking bacon that the tenant finds the smell offensive.

I find the tenant has failed to provide sufficient evidence that the landlords have violated the *Act*, regulation, or tenancy agreement. Therefore, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant has failed to prove a violation of the *Act* by the landlords. The tenant's application is dismissed 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: December 1, 2016

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Residential Tenancy Branch