



# 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 the tenant's application for an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62 of the *Residential Tenancy Act* ("the *Act*").

Landlord's representatives, the tenant and a person assisting the tenant 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. Landlord A.F. (the landlord) and the tenant stated that they would be the primary speakers during the hearing.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Tenant's Application for Dispute Resolution (the Application) which was sent to them by way of registered mail on September 20, 2017. In accordance with section 89 of the *Act*, I find the landlord was duly served with the Application.

The tenant admitted that they did not provide any evidence.

The tenant acknowledged receipt of the landlord's evidence which was sent to him by way of registered mail on October 31, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the landlord's evidence.

### Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

### Background and Evidence

The landlord provided written evidence that this tenancy for the tenant's current rental unit began on August 15, 2013, with a current monthly rent contribution of \$802.00, due on the first day of each month. The landlord testified that they retain a security deposit in the amount of \$300.00.

The landlord also provided in written evidence:

- A timeline of events that have occurred with the tenancy in question since July 18, 2017;
- copies of 17 complaint letters from the tenant to the landlord spanning from July 18, 2017 to October 18, 2017;
- copies of two letters, dated August 01, 2017, and August 21, 2017, from the landlord to an occupant in an adjoining rental unit addressing the noise concerns of the tenant;
- copies of two letters, dated August 01, 2017, and August 21, 2017, from the landlord to the tenant letting them know they have addressed the tenant's noise complaint with the occupant in the adjoining suite;
- A copy of a letter dated August 31, 2017, from a physician at a health centre stating that the tenant must avoid contact with second hand smoke for medical reasons;
- a letter from the tenant, undated, requesting to transfer to another rental unit in the building;
- A copy of a letter from the landlord to the occupant in the adjoining rental unit notifying the occupant of a complaint regarding smoke emanating from the unit;
- A copy of a letter from the landlord to the tenant dated September 18, 2017, advising the tenant that the landlord does not approve the tenant's request to transfer to a different rental unit in the building;
- a letter from the landlord to the tenant dated October 12, 2017, informing the tenant that the occupant in the adjoining unit has provided evidence to the landlord that they have set up wireless headphones to minimize the impact of noise from the rental unit. The letter goes on to state that they have sent the occupant two letters regarding smoking and that staff have inspected the floor

that the rental units are on, multiple times in recent weeks, and have not found any smell of smoke;

The tenant testified that they have sent complaint letters to the landlord for noise concerns and because they have been exposed to second hand smoke which has cause the tenant's eyes to hurt. The tenant further testified that they had a second stroke and their heartrate is 38. The tenant submitted that he was scheduled to have an operation and the doctors refused to proceed due to health concerns.

The tenant testified that there are two adjoining rental units to the tenant's unit, where the neighbouring occupants are allowed to smoke in their rental units and the tenant has 24 hour exposure to this second hand smoke. The tenant stated that the occupants who smoke do not open their windows and that the building does not have a ventilation system. The tenant further stated that when the adjoining occupant opens their unit door, all of the second hand smoke goes into the tenant's unit. The tenant also testified that from 11:00 p.m., throughout the night, one of the occupants in an adjoining suite has the television on all night at a high volume.

The tenant stated that he would like to move to another unit as there are floors in the building that are quiet and have no second hand smoke. The tenant submitted that he gave two certificates regarding the tenant's health to the landlord but that the landlord refuses to transfer the tenant to another rental unit and does not accept the tenant's evidence of health concerns in relation to second hand smoke. The tenant testified that he sent a letter to the landlord on October 05, 2017, where he stated that he would be willing to pay for the extra expenses for a transfer to another unit.

The landlord testified that their main point is that they have responded to the tenant's complaints and have taken a lot of steps to resolve the tenant's concerns. The landlord further testified that the neighbouring occupant, who was the main concern of the tenant, is now using wireless headphones to minimize noise emanating from the unit and is also smoking outside in response to the tenant's complaints. The landlord submitted that the occupant who was smoking in their unit has been given warning letters that smoking in the unit is affecting other occupants' right to quiet and enjoyment and the occupant has modified their behaviour to decrease the smoke in the unit. The landlord stated that there are ongoing inspections in the neighbouring occupant's unit and the hallways between the units have been checked three times in the last few months. The landlord submitted that there is no noticeable smell of second hand smoke and no smell of air freshener.

The landlord testified that all of the buildings under their management have grandfathered tenancies with occupants who smoke and that some suites are worse than others. The landlord further testified that, because there are smokers throughout different units in the building, she does not believe that transferring the tenant to another unit will solve the tenant's issues.

The landlord stated that the tenant is in a subsidized unit and that he only qualifies for a bachelor unit so that restricts the options available for transfer. The landlord further stated that there are many people on a waiting list for units in the building when they become available. The landlord submitted that the people on the waiting list are the first priority for units when they become available. The landlord further submitted that, due to all of the above factors, transferring the tenant to another unit is not a reasonable option in the landlord's view and does not deal with the primary issue of second hand smoke as it is likely to continue be an issue due to multiple smokers throughout the building.

The landlord testified that they are looking at other options to deal with second hand smoke issues throughout the building such as upgraded kitchen fans, air purifiers and weather stripping.

The tenant did not agree that there is no smell of second hand smoke in the hallways and stated that the occupant smokes in their room all night and that no representative from the landlord has done an inspection after 11:00 p.m., when the smell is the worst.

The landlord stated that they did not have the resources available to do inspections in the middle of the night.

### Analysis

Section 62(3) of the *Act* allows the director to make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies. When a party makes a claim for the landlord to comply with the *Act*, the burden of proof lies with the applicant to establish the claim.

Section 32 (1) of the *Act* stipulates that a landlord must provide and maintain a residential property in a state of decoration and repair that:

- (a) complies with the health, safety and housing standards required by law; and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 28 (b) of the *Act* stipulates that a tenant is entitled to quiet enjoyment including, but not limited to freedom from unreasonable disturbance

I find the tenant has not submitted any evidence to establish their claim that the landlord is not complying with the *Act*. I find that the tenant's claims regarding the second hand smoke and noise issues may have been an issue but the tenant has failed to provide sufficient evidence that the issues continue to be ongoing and that the landlord has not been responsive to the tenant's concerns. Although the landlord cannot tell occupants to not smoke in their rental unit, if they were allowed to at the beginning of their tenancy, they can address occupants' actions and how they impact other occupants.

I find that the landlord has provided evidence that the complaints the tenant has raised with the landlord have been responded to in a timely fashion and that action has been taken on the tenant's behalf. I find the landlord has provided evidence of letters given to other occupants regarding their actions and the impact on quiet enjoyment of the tenant. I find that the landlord has provided evidence to show the neighbouring occupant has addressed the noise concerns with wireless headphones. I further find the landlord has addressed the issue of second hand smoke with the adjoining occupant in a firm manner and, based on the landlord's evidence, the occupant has modified their behaviour.

I accept the landlord's evidence and testimony that they have done inspections in the hallways and the neighbouring occupant's unit and have not found any noticeable smell of second hand smoke or air freshener to cover up the smell of smoke. I accept the landlord's affirmed testimony that a transfer to another unit is not going to solve the tenant's issues as there are units throughout the building that have had the rules regarding their tenancy grandfathered, with smoking permitted in their units.

For these reasons I dismiss the tenant's Application, to have the landlord comply with the *Act*, regulations or tenancy agreement, without leave to reapply.

### Conclusion

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: November 24, 2017

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Residential Tenancy Branch