



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PENTICTON AND DISTRICT SOCIETY FOR COMMUNITY  
LIVING and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      OLC

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

At the beginning of the hearing, both parties confirmed that CS is an agent for the landlord, and that the actual name of the landlord was not included in the tenant's original application. As neither party was opposed, the tenant's application was amended to include the name of the actual landlord.

CS and TL ("landlord") appeared as agents for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

As the parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution ('application') and evidence. I find that the landlord was duly served with the tenant's application and evidence in accordance with section 88 and 89 of the *Act*. The landlord did not submit any written evidence for this hearing.

### **Issues**

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

### **Background and Evidence**

This month-to-month tenancy began on March 1, 2017. The tenant moved to a different unit in the same building on November 14, 2017 where he currently resides. The tenant lives in a subsidized rental building where his portion is set at \$360.00 per month. The tenant paid a security deposit in the amount of \$150.00.

The tenant is requesting an order that the landlord deal with issues that are affecting his enjoyment of his rental unit. The tenant testified that he is subjected to constant noise and smoke from the unit above him. The tenant has written to the landlord regarding his complaints, and the issues would continue again after a short period. The tenant testified that the smoke would enter his unit through the air intake as well as the kitchen and bathroom vents.

The landlord's agents testified in this hearing that the landlord had done everything possible to accommodate the tenant. The landlord provided undisputed testimony that they had even re-located the tenant once to another unit. The landlord made the same offer again when the tenant filed more complaints from this second unit, but the tenant declined this offer. The tenant confirmed this in the hearing, stating that he did not want to move.

The landlord's agents testified that this a multi-unit building that housed many seniors, including the one above the tenant. The landlord's agents testified that the noise was from the senior exercising, and that regardless of the accommodations made by the landlord, the tenant continued to express concern about the same issues.

The landlord testified that new rules have been passed where smoking is prohibited, but the smoking rule was grandfathered and certain units still housed smokers.

### **Analysis**

I have considered the evidence and testimony provided by both parties. Although I am sympathetic to the fact that the tenant is subjected to noise and smoke from other units, I find that the evidence presented does not support any contravention of the *Act* or tenancy agreement by the landlord.

As this is a multi-unit building, with many occupants, and which has grandfather no smoking rules, I find that the landlord had taken steps to mitigate the outstanding issues brought up by the tenant by offering to re-locate the tenant on at least two occasions.

Although I find that the tenant's expectations of this tenancy have not been met, I find there is insufficient evidence for me to make a finding that the landlord had failed to meet their obligations regarding this matter. On this basis, I am dismissing the tenant's application 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: December 13, 2019

---

Residential Tenancy Branch