



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Kitsilano Neighborhood House, Tera Property Management Ltd and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC

### Introduction

This hearing dealt with the tenant's application pursuant to section 62 of the *Residential Tenancy Act* (the "Act") for an order that the landlord comply with the Act, regulations or tenancy agreement.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlords were represented by its agent (the "landlord").

As both parties were present service was confirmed. The landlord confirmed receipt of the tenant's materials and testified they have not served any evidence of their own. Based on the testimony I find that the landlord was duly served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

### Background and Evidence

The parties agree on the following facts. The rental unit is a suite in a multi-unit non-smoking building. The landlord has issued a number of warning letters to the tenant in response to complaints about the tenant's smoking near the premises. The landlord reminds the tenant that pursuant to the rules of the rental building smoking is not permitted on the premises or within 6 meters from the building grounds.

The tenant submits that they smoke on a public sidewalk 10 meters away from the building and that the series of warning letters issued by the landlord are meritless. The tenant submits that complaints are made by other residents of the building and they characterize this as harassment and a breach of their right to quiet enjoyment.

### Analysis

The Act sets out at section 28 that a tenant has the right to quiet enjoyment of their rental unit as follows:

**28** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

*(a) reasonable privacy;*

*(b) freedom from unreasonable disturbance;*

*(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*

*(d) use of common areas for reasonable and lawful purposes, free from significant interference.*

While I accept the evidence of the tenant that they have received a series of warning letters from the landlord reminding them of the rules prohibiting smoking, I find that this does not constitute a breach of their right to quiet enjoyment as set out in the *Act*.

I accept the landlord's evidence that they have received complaints about the tenant's conduct and have issued warning letters in response. In a multi-unit rental building, when there are disputes between tenants, a landlord must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections. I find that the landlord's issuance of warning letters to the tenant to be a reasonable manner in which to fulfill their duty.

I find that there is insufficient evidence that the conduct of the landlord demonstrates a breach of the Act, regulations or tenancy agreement such that it would be appropriate to issue an order.

Conclusion

The tenant's application is dismissed in its entirety 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: June 12, 2020

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Residential Tenancy Branch