



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, FFT

### Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the Landlord to comply - Section 62; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Are the Tenants entitled to an order for compliance?

Are the Tenants entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: The tenancy under written agreement started June 1, 2020 on a fixed term to end April 30, 2021. Rent of \$1,825.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$912.50 as security deposit and \$912.50 as a pet deposit. The tenancy agreement restricts the Tenants from smoking in their unit or on the property.

The Tenant states that smoking has occurred in the building and argues that the Landlord has breached the tenancy agreement by not providing a smoke free building. The Tenant is unable to point to any section of the tenancy agreement wherein the

Landlord promises to provide a smoke-free building. The Tenant states that at the outset of the tenancy the Landlord informed the Tenants that they would be provided with a smoke free building. The Tenant argues that the Landlord has made such a promise by virtue of notices put up that the building is smoke-free.

The Landlord states that while they are not required under the tenancy agreement to provide a smoke free building, they are trying to provide one. The Landlord states that all of the tenancy agreements in the building restrict tenants from smoking in their units or on the property. The Landlord states that when the Tenants complain about smoke, they are very general complaints such as smelling smoke. The Landlord states that they still follow-up complaints and investigate.

The Tenant states that it wishes to bring a claim for breach of the Tenants' right to quiet enjoyment under "the umbrella" of its current application. It is noted that there are no claims or particulars for such a claim in the application and the Tenant has made no amendment to include this claim in the application.

### Analysis

Section 62(3) of the Act provides that the director may 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. There is nothing in the Act or Regulations that require landlords to provide smoke-free rental units or buildings. Given the tenancy agreement and the Landlord's evidence that no such promise was made to the Tenants I find on a balance of probabilities that the Tenants have not substantiated that the Landlord agreed to provide a smoke-free building. As such I find that the Tenants have not substantiated that the Landlord is not in compliance with the Act or the tenancy agreement. I therefore dismiss the claim for an order for compliance. As this claim has been unsuccessful, I decline to award recovery of the filing fee and in effect the application is dismissed in its entirety.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that claims are limited to what is stated in the application. As nothing in the application sets out particulars or seeks an order in relation to a breach of the Tenants' right of quiet enjoyment, I find that I may not consider this claim. The Tenants remains at liberty to make an application setting out this claim.

### Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 11, 2021

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Residential Tenancy Branch