



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LE GERS PROPERTIES DBA SAND DOLLAR  
MANOR and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      OLC

### Introduction

Both parties attended the hearing. At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself.

Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. **I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.**

### Issue(s) to be Decided

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

### Background and Evidence

The tenant gave the following testimony. The tenancy began on September 1, 2019 with the monthly rent of \$1095.00 due on the first of each month. The tenant provided the following written submission as to the reason why she made this application:

*The issue to be arbitrated concerns the failure of the landlord's agent, Sue Farrell, to enforce the current prohibition of smoking in this building or else mitigate the effects of smoke escaping from rental units where smoking is still permitted under an old lease, thereby ensuring that second-hand smoke does not seep into my apartment and that my right to quiet enjoyment is upheld.*

The tenant testified that no smoking is a material term of her tenancy however, she has been bothered by it from the outset of her tenancy. The tenant testified that in February 2021 it became increasingly worse, occurring 3-4 times per week and from about 6:00 p.m. into the early hours of the morning. The tenant testified that the tenant in unit 210 admitted that her boyfriend smokes when he visits. The tenant testified that she offered several alternative solutions to the landlord but was ignored. The tenant requests an order to have the landlord enforce the non-smoking clause.

The landlords gave the following testimony. The landlords testified that the tenant in unit 210 doesn't smoke. The landlords testified that they have observed people smoking near the subject tenants ground floor unit. The landlords testified that when the tenant in unit 210 signed her tenancy agreement in 2011, smoking was allowed in her unit. The landlords testified that the present owners purchased the building in May 2015 and imposed a no smoking clause to all new incoming tenants from that point onward. The landlords testified that they are not sure if the tenant in unit 210 is the cause of the smoke going into the subject unit as alleged but are limited in what they can do because of her tenancy agreement. The landlords testified that the tenant is in the best location of the building as there are very few known smokers in that portion. The landlords submit that they have done what they can to address the issue and will continue to attempt to make the tenant comfortable.

### Analysis

When a party makes an application, they bear the burden of providing sufficient evidence to support their claim, on a balance of probabilities. The tenant submits that the tenant above her in unit 210 is the cause of the smoke entering her unit. The tenant further submits that even if its not this tenant, its up to the landlord to investigate and mitigate the smell of smoke in her unit. The landlords testified that the tenant in 210 doesn't smoke, however, that tenant signed a tenancy agreement in 2011 when smoking was allowed. The current owners purchased and imposed a no smoking clause when they took possession in May 2015. The landlords testified that the tenants that signed agreements prior to May 2015 were "grandfathered in". Of the 73 units in the building the landlords estimate that there are "about 12 smokers left".

The tenant agreed that she was aware that residents were “grandfathered in” and permitted to smoke inside their rental units before she moved into the rental unit and before signing the tenancy agreement. The tenant chose to live in the rental unit, despite the fact that she is a non-smoker. It is unclear if the tenant in unit 210 is in fact the cause of the smoke entering the subject unit, but even if the tenant in unit 210 is smoking, her tenancy was grandfathered in that allows smoking in the unit and the landlords have little recourse other than asking for her consideration and cooperation to minimize any smoking that may be occurring. I find that the tenant is not entitled to an order compelling the landlords to comply with the Act, regulation, or tenancy agreement.

The tenant has not been successful in their application.

### 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 01, 2021

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Residential Tenancy Branch