



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Quadreal Property Management and [tenant name suppressed to protect privacy]

## **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’s compliance - 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. The Parties confirmed that they were not using any recording devices for the hearing.

### Issue(s) to be Decided

Is the Landlord out of compliance?

Are the Tenants entitled to an order of compliance?

Are the Tenants entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed or undisputed facts: the tenancy started on May 1, 2013. At the outset of the tenancy the Landlord collected \$690.00 as a security deposit. Rent of \$1,643.00 is payable on the first day of each month. Applicant SB is not named as a tenant on the tenancy agreement and is an occupant of the rental unit.

The Tenant states that the daily early morning and evening smell of cannabis smoke in their unit started in 2019. The smell occurs mainly in the kitchen and remains in the unit for an average of one hour. For the past month the frequency of the smell has been reduced to once a day at 3:30 a.m. The Tenants do not know where the smoke is coming from but believe that the smoke is coming from inside the building and that whoever is smoking is attempting to cover the smell with a dryer sheet as the smell of laundry is always present with the cannabis smell. The Tenants believe that many times the smell is coming from the unit directly below their unit and that attempts are being made to vent the smells outside through the laundry vent.

The Tenants state that they only keep their windows open when the smoke is in the unit. The Tenants have made over 70 reports of the problem to the Landlord. Security personnel have immediately responded each time and have confirmed the presence of the smell in the unit. The Tenants have suffered problems with their health, are stressed out and have lost sleep as a result of the smell. This has affected their business and income. The tenancy agreement contains a smoking prohibition however the Tenants are not aware if all other tenants have the same prohibition. The Landlord has posted notices that there is a no smoking policy for the building. The Tenants seek a relocation to a different unit in the building however the Landlord is only willing to relocate the Tenants for a \$300.00 increase in rent. The Tenants are unable to pay an increased rent.

The Landlord states that the Tenant has made daily complaints since June 26 or 27, 2021. The Landlord states that they have also been short staffed. Security reports for each complaint indicate that no smell can be detected in any of the hallways for each floor at the time of the complaints. Other rental units surrounding the Tenants' unit have also been inspected, after being given required notice, with no signs of smoking detected. The tenants in these other units confirmed the presence of cannabis smell in their units with most not being bothered and some saying that the smell comes from outside the building. The units below the Tenants' unit do not have open balconies and

their laundry rooms are closet size with a stacked washer and dryer. The Landlord questions how the vent from the dryer could be accessed to expel cannabis smoke. The Landlord has confirmed the smell in the Tenants' unit on maybe one occasion. On October 27, 2021 the Landlord responded to a complaint by the Tenants and entered the unit to find the windows open with the fan blowing. On this date there was no smell inside the unit but could be detected on the balcony. The Landlord does not know where the smell is coming from and that as there are designated smoking areas on the grounds of the building the smell may be coming from those areas. The Landlord will inspect the operation of the Tenants' kitchen vent no later than November 19, 2021. The Landlord objects to the Tenants' video evidence as it was taken without the knowledge or consent of the Landlord and their agents or security personnel. The Landlord argues that this is a privacy breach and should be excluded from consideration. The Landlord indicates that they could consider a transfer to another comparable unit but that this would require a rental increase of at least \$200.00 per month.

The Tenant argues that the videos are not a privacy breach as they are allowed to record conversations they have without the consent of the other conversant.

### Analysis

Section 28(b) of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to freedom from unreasonable disturbance. 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. The Landlord has given evidence of the smell of cannabis being inside and outside the Tenants' unit. Given the Tenants' evidence of the smell, I accept that the Tenants are experiencing the smell of cannabis inside their unit. The Landlord has not disputed the extent of the disturbance on the Tenants other than to provide evidence that other similarly situated tenants are not disturbed by the smell of cannabis in their units. However, this evidence from the other tenants also indicates that the smell

is not experienced as frequently as by the Tenants. Further the Tenants appear to have a singular aversion to the smell of cannabis. For these reasons I find on a balance of probabilities that the Tenants are being unreasonably disturbed by the smell of cannabis. Nonetheless, the undisputed evidence indicates that the Landlord has responded to the continuous complaints made by the Tenants and has conducted investigations. I also accept the Landlord's agreement to conduct further investigations by inspecting the vent. I consider this response by the Landlord to be reasonable in light of the undisputed evidence that neither Party can determine where the smell is coming from.

The Landlord's refusal to provide another unit to the Tenant without an increase in rent is not supported by any evidence of loss of rental income by the provision of a different unit and there is no evidence that the Landlord could not obtain the extra rent being sought for an empty unit from the Tenants' subsequent empty unit. However, there is no evidence that another unit would not be subject to smells of cannabis smoke either from outside the unit or by another tenant smoking inside their unit. For this reason, I decline to order the Landlord to provide a different unit to the Tenants. Instead, and as the Tenants have a continuing right to freedom from unreasonable disturbance, I order the Landlord to continue responding and investigating any future complaints by the Tenants as has been done to date. Given the Landlord's evidence of being short staffed and the undisputed evidence of the frequency of the past complaints, the Landlord may wish to reconsider its refusal to provide a different unit to the Tenants. Should the Landlord fail to respond to the Tenants' future complaints of disturbance from the cannabis smells, as has been done to date, the Tenants remain at liberty to make a future claim for compliance and a claim for compensation.

As the Tenants have been somewhat successful with its claim, I find that the Tenants are entitled to recovery of the **\$100.00** filing fee and the Tenants may deduct this amount in full satisfaction of this claim.

Conclusion

The Landlord is ordered to continue to respond to and investigate complaints of cannabis smells in the Tenants' unit.

I grant the Tenants an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: November 24, 2021

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Residential Tenancy Branch