



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, RR, RP

### Introduction

The Tenant filed an Application for Dispute Resolution on July 15, 2022 seeking:

- compensation for monetary loss or other money owed,
- reduction in rent for repairs, services or facilities agreed upon but not provided
- repairs made, after a request made in writing.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “*Act*”) on October 12, 2022. Both parties attended the hearing, and confirmed they received the prepared documentary evidence of the other.

### Issues to be Decided

- i. Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?
- ii. Is the Landlord obligated to make repairs to the rental unit, pursuant to s. 32 of the *Act*?
- iii. Is the Tenant entitled to a reduction in rent for repairs, services, or facilities agreed upon but not provided by the Landlord, pursuant to s. 65 of the *Act*?

### Background and Evidence

Both parties presented a copy of the tenancy agreement signed by the parties on August 12, 2019 for the tenancy that started on September 1, 2019. The Tenant pays a pro-rated amount of rent per month, as per the agreement.

Because of a prior dispute resolution hearing, with a prior Arbitrator decision dated March 2, 2022, the Tenant has been paying a reduced rent of \$480.70 per month, starting from April 1, 2022. This is a reduction of 45% of the monthly rent amount that is normally \$874. That previous Arbitrator found there was a reduction in the value of the tenancy, “due to the landlord’s failure to guarantee the tenant’s right of quiet enjoyment and not providing and maintaining the rental unit in a healthy state.”

In regard to the tenancy agreement, the Tenant pointed to paragraph 42 of the agreement, which states: “The Tenant agrees to the following material term regarding smoking; No vaping or smoking of any combustible material is permitted on or within the residential property, including within the rental unit.” The Tenant reiterated this means the building is “guaranteed 100% no smoking.”

### *Tenant’s evidence and submissions*

The Tenant presented that smoking has continued to be a problem in the building in general, and increasingly for them as a Tenant that has asked repeatedly for the Landlord’s action on enforcing the smoking rules within the building. This was the substance of the previous hearing in which the Arbitrator agreed with the Tenant and, in addition to reducing rent by 45% going forward from April, granted the Tenant an award for the equivalent past rent reimbursement, from October 2021 to March 2022.

Additionally, the Landlord had not “done ostensive/demonstrative smoking signs of building interior which they were asked to do by [the prior Arbitrator].” This is the Tenant’s dual request for repairs: for the Landlord to “properly sign the building non smoking”, and the installation of “proper [up-to-date] nicotine detection units in the rental building.”

For this piece of their Application, the Tenant presented communication from a purported director of the Residential Tenancy Branch who engaged in a telephone consultation with them on the issue. A note describing this phone call provides that “the landlord was clearly still at fault”, and “the landlord was in defiance of the arbitrator’s recommendations and in defiance of

me as a tenant.” This resulted in the Tenant’s complaint to the Residential Tenancy Branch compliance and enforcement unit.

They also provided:

- copies of their parent’s undated request to the Landlord on the issue of the problematic other resident and the signage in place only on the outside of the building.
- an image of an April 12, 2021 note posted by the Landlord advising residents that “Smoking must be contained to public sidewalks.”
- a note from their parent to the Landlord describing their observation of an open stairwell door on July 30, 2022, leaving the “smell of smoke was profuse and disgusting.”
- five separate witness statements that attest to either the odour, or the presence of haze
- copies of their continued complaints and requests to the Landlord, either via email or through a Landlord-provided complaint form. In one query dated July 21, 2022 the Tenant noted the “cigarette smoke fills my suite daily, no interior smoking signs have yet been posted. . .” They also described the director of RTB as advising that the Tenant qualifies for a further rent reduction beyond what the Arbitrator awarded in March.

The Tenant also provided evidence of their medical condition. This is a doctor’s description of the Tenant’s condition dated January 27, 2022. These are “including respiratory symptoms” with “incidents of shortness of breath arising from exposure to smoke.” A previous study in May 2021 revealed “airflow that was mildly reduced”, giving a diagnosis of “mild Chronic Obstructive Pulmonary Disease.” In the hearing, the Tenant described an increasing difficulty with their breathing, leading to their inability to sleep for approximately half the night. The difficulty with smoke is the worst at 2 or 3 am when there is nobody outside, and no chance that something exterior to the building is causing them difficulty. The Tenant described a persistent haze that starts in the building around 4pm, with others in the building making the same observation.

As an update to their Application, the Tenant presented that the problematic other resident still lived at their rental unit, as observed by the Tenant’s home care worker on August 25 and September 1. This is despite the Landlord’s “fake eviction in July” of that Tenant. In the hearing the Tenant described that resident still staying with others in the building, and being subject to threats/intimidation from that resident in the past.

The Tenant also mentioned their notice of another building resident smoking within the building on the day prior to the hearing. The took a photo of that; however, they did not provide this in their evidence.

*Tenant's claim for compensation*

The Tenant presents that the months they have lived in the rental unit have been “unsafe conditions”, with a “new onset of COPD, loss quiet enjoyment, personal injury.” They make the claim for further backdated rent reduction from September 2019 to October 2021, the timeframe prior to the past-awarded rent reimbursement. This amount, as indicated on their Application, is \$9,309.60.

The Tenant also applied for a rent reduction going forward from March 7, 2022, of a further \$480 per month, essentially making their rent payments all cancelled, because the Landlord “has not resolved the cigarette smoke issue that fills not only my suite but the entire rental building.” In a written request, the Tenant claims “a reduction to 0.00 rent” because “I no longer am prepared to pay any rent at all to live here.” As in the prior hearing, the Tenant identified a “primary offender” that was the source of much of their difficulty, and that other building resident was not evicted as of the date of this Application.

The Tenant also applied for a rent reduction going forwarding from March 7, 2022, of a further \$480 per month, essentially making their rent payments eliminated, both retroactively and going forward, because the Landlord “has not resolved the cigarette smoke issue that fills not only my suite but the entire rental building.” In a written request, the Tenant claims “a reduction to 0.00 rent” because “I no longer am prepared to pay any rent at all to live here”. As in the prior hearing, the Tenant identified a “primary offender” that was the source of much of their difficulty, and that other building resident was not evicted as of the date of this Application.

On the prepared Monetary Order Worksheet, the Tenant added the two amounts above, and additionally provided for the cost of a hotel suite placement. This is for \$135 per night.

In total as provided on their worksheet the Tenant claims compensation for \$17,440.

*Landlord's Response evidence and submissions*

The Landlord presented that the other resident who was the source of much of the Tenant's difficulty was evicted and has not been in the building since that tenancy ended. The ending to that tenancy was protracted through a dispute resolution proceeding in which that resident

challenged the eviction and had to wait until an arbitrator granted an order of possession to the Landlord that they then duly served to get that resident out of the building. This was a process that stretched from February 2022 to July 2022.

The Landlord also presented that they posted signs that contain the easily recognized circled no smoking icon. These are posted at every entrance to the building, as shown in the set of photos the Landlord provided showing this.

The Landlord also submits they are continuing a regimen of scheduled visits to the rental unit building, even after business hours, to ensure there is no smoking. They provided a list of dates and times to show visits approximately every second day, with "All hallways and stairwell on all 4 floors visited to investigate for any smoke smell." This ran from August 5 to September 15. The Landlord noted in this list that "There was no cigarette or cannabis smell in any of the hallways or stairwells on any of these days."

The Landlord also presented that no other building residents were complaining of odour or smoke. To this, the Tenant responded that the Landlord was lying, and the Landlord clarified that there were no complaints since the problematic other resident was evicted.

The Landlord also provided an image of the street area outside the rental unit building, to show how close the rental unit is to the sidewalk area and bus stop. In the hearing the Landlord proffered that this would be the source of an odour at 2 or 3am as the Tenant described.

The Landlord also described how they offered the Tenant a transfer to a different building earlier in the year. The Tenant responded to say the Landlord could not guarantee a ground floor unit, or non-smoking. The Landlord noted the Tenant did not have an active open application for a transfer to a different rental unit; this would open up more options to them if that were in place.

In a summary written statement that is in their evidence, the Landlord states they are not breaching any section of the *Act*.

### Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and

order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the Applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation, or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find the Tenant's submissions touch on each of the following pieces of the *Act*:

- s. 28 provides that a tenant is entitled to quiet enjoyment including reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the Landlord's s. 29 right to enter, and use of common areas.
- s. 32 provides that a landlord must provide and maintain property in a state that complies with the health, safety and housing standards required by law, and with regard to the location of the rental unit, makes it suitable for occupation by a tenant.

In this present Landlord-Tenant scenario, I make two findings on the applicability of these pieces of the *Act*:

- The Landlord has not breached any obligation to maintain the rental unit in a state that complies with health standards required by law, making it suitable for occupation by a tenant. I find the Landlord followed through on evicting a problematic resident. That process involved an arbitrator's ruling that the Landlord had a valid reason for doing so, thereby granting an order of possession to end the tenancy. While the Tenant maintains this was a "fake" eviction undertaken by the Landlord, I find the evidence shows that is not the case. The Tenant did not provide proof positive that the other resident continues to live in the building and continues to smoke, nor did they provide evidence of other chronic offenders that the Landlord was not dealing with.

The earlier Arbitrator decision in which they prescribed a rent reduction and award contained the Arbitrator's exact wording that the Landlord "may install ostensive permanent signage throughout the rental building indicating that smoking is not allowed." The Tenant has not proven the Landlord's breach in not complying with s. 32 by not installing signage throughout the rental unit building. This was not a permanent

fixed directive from the prior Arbitrator, and there was no order for the Landlord to install signage throughout the building.

The Arbitrator emphasized the Tenant's rights vis-à-vis s. 28 and s. 32, finding that the Landlord had not sufficiently addressed those concerns, thereby breaching the *Act*. In this present hearing, I find the Landlord has completed positive steps to address the Tenant's concerns, through evicting a positively identified problematic resident, and installing clear, large signs posted at all building entryways. As well, I find the Landlord is proactive in regularly checking all areas of the building a few times weekly, with no evidence that this practice has ceased or been neglected.

- Given my finding that there was no breach of s. 32 by the Landlord, I find the Landlord did not breach the Tenant's s. 28 right to quiet enjoyment or exclusive possession. The Tenant did not directly state the issue was impacting their quiet enjoyment in the rental unit; however, I infer this to be the essence of their submissions where the issue was ongoing and affecting their health as they submit. I find there is no definite impact to the Tenant's quiet enjoyment or freedom from unreasonable disturbance that is attributable to the action or inaction of the Landlord here.

The Tenant described a "haze" existing in the hallways and other areas of the apartment building. This is something that is tangible, and I find it not burdensome to the Tenant to provide proof of this haze, first to the Landlord as a complaint/request, then as evidence for this hearing to show the Landlord did not act on that evidence. I find the Tenant did not present evidence of this "haze" even though they rely on this phenomenon as something that *can be seen*, and therefore it could be recorded as proof positive that smoke was infusing all areas of the building as they claim. Aside from this, the Tenant stated there is odour; however, this description does not outweigh the evidence of the Landlord showing the dates and times of their building inspection visits in which they did not detect any odour.

I find the witness statements provided by the Tenant refer primarily to the state of things prior to the Landlord evicting the other problematic resident. Other witness statements do not provide a single source of smoke or odour. The Landlord cannot be expected to blanket evict all other building residents in an attempt to "clean house". The Landlord evicting a problematic resident based on evidence and a legal process is what carries weight in showing the Landlord is being proactive in dealing with complaints, rather than complaints that identify odour as opposed to unit numbers of offenders, first-hand observation of others smoking, or evidence of the Landlord's neglect or ignoring the Tenant's or other residents' claims here. In short, I find as fact that the Landlord was confronting the issue.

Additionally, the Tenant provided evidence they spoke to a director at the Residential Tenancy Branch who informed them they should be receiving further rent reduction. That evidence is hearsay, and carries no weight.

In sum, from the time of the prior Arbitrator decision to this Application and ongoing, I find there was no violation of the *Act*, the *Residential Tenancy Regulation*, or the tenancy agreement by the Landlord here. The Tenant has not proven the breach by the Landlord in their submissions or evidence; therefore, they did not meet the burden to establish that a damage or loss results from such a violation.

In line with my finding that the Landlord is not breaching their obligation to repair and maintain the rental unit, I make no order for repairs. I dismiss this piece of the Tenant's Application without leave to reapply. On their Application, the Tenant described "nicotine detection units"; however, there was no evidence of such a mechanism, its availability, nor the utility thereof.

Fundamentally, the Tenant did not prove the Landlord violated the *Act*, regulation, or tenancy agreement; therefore, their claim for compensation cannot succeed, as per point 2 listed above. I find the Tenant has not taken steps to mitigate the damage or loss by applying to the Landlord and expressing a willingness to work with them on finding another suitable accommodation. That is a requirement set by s. 7(2) of the *Act*. I find it is a foregone conclusion in the Tenant's mind that other available rental units will be inhospitable to them, either based on location or their belief that the Landlord caters to smokers.

Specifically, on individual pieces of the Tenant's Application for compensation:

- I find there is insufficient evidence from the Tenant to show the Landlord was violating the legislation and/or the tenancy agreement since the start of this tenancy. While the previous Arbitrator made the finding that it was so for a particular period -- primarily focused on the other problematic resident -- that decision does not stand as proof that the Landlord was dismissive of the issue since the start of the tenancy. The Tenant here did not provide evidence that the issue was in place from day one of this tenancy and the Landlord was shirking their obligations. Therefore, I dismiss the Tenant's claim for past rent reimbursement (\$9,309.60).
- On the Tenant's further claim for complete rent recovery from March 2022 and going forward, I re-state my finding that there was no breach by the Landlord. This is not a case in which the Tenant was completely denied a rental unit, and they did not take up residency elsewhere (thereby incurring extra costs to them) in order to escape the problem, thereby completing devaluing the tenancy.



- On the Tenant's claim for an approximate cost for hotel expenses, I am not satisfied of the Tenant's need to stay elsewhere. That may be a situation of extreme medical distress because of smoke inhalation; I find that is not proven with the Tenant's evidence in this current case. There is no evidence the Tenant was out-of-pocket because they stayed elsewhere and had to pay for that, and the *Act* does not award for hypothetical situations or alternative measures without evidence of the Tenant proffering solutions or working with the Landlord.

For these reasons, I dismiss the Tenant's claim for compensation as either rent reduction on an award to them, without leave to reapply.

Finally, the Tenant has been paying 45% less rent since April 2022. That was based on the Arbitrator's finding that the Landlord had neglected their obligations under s. 32, thereby affecting the Tenant's s. 28 right to quiet enjoyment free from disturbance. I am satisfied the Landlord has rectified the problem to the fullest extent possible along the way.

The Arbitrator in their decision required the Landlord to apply for authorization to collect full rent. That is for the Landlord "to prove, on a balance of probabilities, that the landlord is complying with the *Act*, especially sections 28(b) and 32(1) of the *Act*." This present hearing is the Tenant's Application for further compensation where they allege the Landlord is still breaching these sections of the *Act*. From this, the Landlord is having to prove they are complying with the *Act*, in response to the Tenant's allegation that they are not. I find the prior Adjudicator did not anticipate a further claim from the Tenant here. Given that the Landlord's responsibility has come into question again, and they have had to answer specifically the question of their compliance with the *Act*, I find the Landlord is relieved of the requirement to apply separately for authorization to collect full rent. That question has arisen rather organically, and I gave that issue full consideration in my decision above.

The *Act* s. 62 sets out the director's authority respecting dispute resolution proceedings:

- (2) The director may make any finding of fact or law that is necessary or incidental to making a decision or order under this *Act*.
- (3) 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.

I find the Landlord is now complying with s. 28(b) and s. 32(1) of the *Act*. By application of s. 62(2), I find the Tenant's entitlement to rent reduction has ended; therefore, I re-instate their

obligation to pay rent as established in the tenancy agreement. I so order the Tenant to pay the full rent amount monthly, commencing on November 1, 2022.

Conclusion

For the reasons above, I dismiss all pieces of the Tenant's Application, without leave to reapply.

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

Dated: October 13, 2022

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Residential Tenancy Branch