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Langley tenants fight in-suite strata smokers

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By Charlie Smith

The B.C. Human Rights Tribunal has declined to dismiss a complaint by a Langley couple who object to their neighbours' smoking. This is the second time in two years that the tribunal has refused to dismiss a complaint of this nature.

Paul and Rose Kabatoff, who own their suite, alleged to the tribunal that Strata Corporation Plan NW 2767 discriminated against them on the basis of physical disability. According to an October 13 preliminary decision by tribunal member Marlene Tyshynski, they both suffer from respiratory illnesses and allergies that are exacerbated by secondhand smoke.

About 14 months ago, smokers moved into the suite below. The Kabatoffs sought assistance from the strata corporation, and even provided a letter from their doctor.

"The Kabatoffs allege that the Strata Corp. has refused to do anything about the second-hand smoke issue and that they were generally told that if they had a problem with people smoking they should move," Tyshynski wrote in her two-page decision.

The president of the strata corporation, Agnes Janzen, denied there was any discrimination. She told the tribunal that the building does not have a no-smoking bylaw, and therefore has no authority to respond to the complaint.

"Ms. Janzen denies that the Kabatoffs were told that if smoking was injurious to their health they should move," Tyshynski added.

Janzen applied to have the complaint dismissed on a preliminary basis.

She argued that because there wasn't a ban on smoking in an owner's private suite or on a balcony in the building, there was no basis for the complaint. Tyshynski, however, refused her application to dismiss. In her decision, Tyshynski wrote that if the Kabatoffs established that they have disabilities that are made worse by secondhand smoke, then the strata corporation's failure to accommodate their disabilities could constitute discrimination under the B.C. Human Rights Code.

Tyshynski issued a similar decision last year in a human-rights case involving a tenant who objected to her neighbours smoking in a social-housing complex.

Sheila Abraham filed a complaint against the Greater Vancouver Housing Corp., B.C. Housing, Metro Vancouver, and the B.C. government, and she raised a systemic and an individual allegation of discrimination.

Abraham stated that she has multiple disabilities, including "hyper-reactive airway disease caused by second-hand smoke".

She claimed that she suffered discrimination because of the respondents' reluctance to provide smoke-free housing.

Under Section 8 of the B.C. Human Rights Code, a person must not discriminate against a person or a class of persons because of the person's race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, or age.

Under Section 10 of the code, a person must not deny a person the right to occupy space as a tenant that is represented as being available for occupancy by a tenant or discriminate against a person or a class of persons regarding a term or condition of the tenancy.

There is no law against smoking in multi-unit residential buildings.

Last year, the Georgia Straight reported that the Greater Vancouver Housing Corporation, which operates 54 properties, had launched a pilot project at the 86-unit Heather Place in Vancouver, the building where Abraham lived. As part of the project, certain areas of the complex were declared smoke-free.

According to Tyshynski's preliminary decision, which was issued on February 1, 2008, there were three smokers in the six-plex inhabited by Abraham. Two moved out after the GVHC board declared the building smoke-free. However, a tenant who lives below her stayed.

"Ms. Abraham submits that her allegations against the Ministry and BC Housing are of discrimination against persons with disabilities, in the course of their performance of their roles as funder, overseer and administrator of public housing in BC," Tyshynski wrote, adding that the complaints were not about the day-to-day operation of public housing or issues relating to tenancy.

She concluded that the final determination would be best achieved at a hearing.

If people with respiratory problems—such as the Kabatoffs and Abraham—are successful with their complaints about the effects of secondhand smoke, this could lead to a lot more complaints coming forward in the future.