
Landlords

Tips for Addressing Complaints of Second-Hand Smoke

Many landlords are reluctant to address complaints about second-hand smoke where smoking is permitted in some or all rental units. But they would be wrong to assume that they have no authority to address these complaints. The BC Residential Tenancy Branch has developed *Policy Guidelines on the Right to Quiet Enjoyment*. While these Guidelines do not include second-hand smoke (SHS) as an example of what could result in the loss of quiet enjoyment, they do include other examples of what could be considered a loss of quiet enjoyment – such as “unreasonable and on-going noise.”

Addressing the issue of SHS is similar to addressing the issue of loud music. While playing music is allowed in private units, when it’s played too loudly and significantly interferes with the quiet enjoyment of other tenants, landlords can take steps to stop this intrusion, including last resort steps to end the tenancy. Complaints of SHS can be considered a breach of quiet enjoyment and should be addressed accordingly.

Further, there is case law in BC Supreme Court where a Judge found that:

"It is conceivable that the exposure of a tenant and her children to second-hand smoke, with all of the associated health risks, could interfere with quiet enjoyment or breach the tenant's right to be free from unreasonable disturbance."

Source: Lawrence v. Kaveh, 2010 BCSC 1403

A landlord is required to take reasonable steps necessary to address a breach of quiet enjoyment. The RTB guideline states: “A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.”

What are considered reasonable steps will vary with the facts of each situation. Past RTB dispute resolution decisions have varied, from attempts to broker a compromised solution, limiting the smoking by a tenant to certain hours, offering the affected tenant alternative accommodations, and evicting the smoking tenant. For more information, view the legal opinion on our website.

Steps for addressing complaints of second-hand smoke include:

- Identify the source of the smoke and determine if there are remedies that could minimize the smoke transfer, such as:
 - Install weather-stripping around doors and windows.
 - Fill or patch cracks in walls, ceiling, and inside of cabinets on common walls.
 - Insulate the air spaces around plumbing pipes.
 - Insulate and place covers over electrical outlets and phone jacks.
 - Check the structure of your residence, as sometimes structural weaknesses will allow second-hand smoke to travel between units.
 - Ensure the building ventilation system is working efficiently by:
 - Cleaning, changing or installing new filters;
 - Adding more fresh air intake into the ventilation system (this might involve adjusting the timer, if applicable);
 - Restricting the amount of air exhausted through the ventilation system from the units of tenants who smoke.
- If the smoke cannot be eliminated, talk to the smoking tenant to see if you can work out a negotiated solution to address the problem. Could the tenant smoke in another area or outside? If an agreement is

reached, it is important to put it in writing for future reference. Have the tenant sign a copy of the dated letter from the landlord to tenant, confirming the discussion and the tenant's agreement to abide by the negotiated agreement.

- Ask the tenant(s) who are suffering from the smoke to provide you with information concerning the severity, frequency and impact of the smoke. The more information you collect, the easier it will be to resolve the problem. If possible, ask the tenant to keep a log that includes:
 - How the smoke is entering the unit and how often?
 - What steps the tenant has taken to resolve the problem?
 - What impact the smoke has had on the health of the tenant and/or family members? Do they have letter from physician?
 - How has the problem denied the tenant the full use and enjoyment of his/her apartment?
 - Have others in the building complained about the smoke?
 - Has the tenant provided any supporting evidence from friends or other tenants who can verify the amount and frequency of the smoke entering the unit?

- If there is evidence that the smoke is significant and ongoing and a negotiated settlement cannot be reached, consider issuing a "breach letter" or "caution notice" advising the smoking tenant(s):
 - They have disturbed the quiet enjoyment of other tenants. Give specific examples of the breach of quiet enjoyment;
 - To cease the violating behaviour, include a specific statement regarding the compliance required, such as "cease smoking anywhere on the residential property" or "confine your smoking to the designated area of the property"; and
 - That failure to comply could result in a Notice to End Tenancy.

Note: A Caution Notice is legally required only if the tenancy is being ended for a breach of a material term of the tenancy agreement, e.g. a no-smoking clause. However, it is a recommended practice to issue a Caution Notice for any breach that could lead to a Notice to End Tenancy. (Access online form at the Residential Tenancy Branch website).

Visit Tools & Resources section of website for sample tools, including sample *Tenant Caution Notice* and *Tenant Log*.