



Apply for a Dispute Resolution Hearing

The Residential Tenancy Branch

The Residential Tenancy Branch (RTB) is the government office that provides landlords and tenants with information and dispute resolution services. A dispute resolution hearing is a quasi-judicial process for the resolution of disputes between landlords and tenants. Dispute Resolution Officers (DRO) help parties resolve their disputes during a formal hearing, and make a binding decision on the parties. Based on the evidence presented by the landlord and tenant, the DRO makes a decision about the problem, based on an interpretation of the law. DROs are not bound by precedent and decisions are made on a case-by-case basis.

It is important to recognize that proving a loss of quiet enjoyment based on second-hand smoke infiltrating your home can be difficult. Before applying for a dispute resolution hearing, we recommend that you review the section on quiet enjoyment to understand the challenges you may face in pursuing this option. If you decide to apply for an RTB hearing to seek compensation for the loss of quiet enjoyment, here is a list of factors that a dispute resolution officer (DRO) may consider when deciding on the merits of your case:

1. Is smoking allowed in the private units of the apartment building?
2. If it is known where the smoke is coming from, does the tenant who smokes have a right to smoke in the unit?
3. If smoking is allowed in the units, is the amount of smoke frequent, ongoing and a significant interference with the tenant's use or enjoyment of the unit?
4. Is the smoke affecting the health of the tenant?
5. What steps did the tenant take to minimize the smoke entering the unit or rectify the problem?
6. If the landlord was aware of the problem, and there was evidence of significant smoke infiltration, did the landlord take reasonable steps to correct the problem?

A checklist for your dispute resolution hearing

(Refer to website section: Taking Action/Document the Problem)

1. **What was included in the terms of your tenancy agreement or the smoking tenant's agreement?**
 - Does your tenancy agreement include a no-smoking clause or is it silent on smoking? Is smoking permitted in the unit where the smoke is coming from?
 - If the smoking tenant is violating a no-smoking clause in his/her tenancy agreement, this would be a breach of a material term of the tenancy and grounds for eviction.
 - Did you ask about a smoke-free building when you first rented your unit? Did the landlord make any promises about no smoking in the building?
 - How long has the problem been occurring? Is this a new problem, or has it been going on since your tenancy began?



2. Have you collected evidence to show that the smoke is causing a significant interference?

- Have you documented how often the smoke seeps into your suite?
- Is the amount and frequency of smoke enough to qualify as “unreasonable” to the ordinary person? (Dates and times of occurrences)
- Is the amount of smoke causing significant interference with the use and enjoyment of your home – has the smoke had such a negative effect that it has made all of your home or certain rooms uninhabitable, or the balcony uninhabitable?
- Was the smoke so bad that you had to leave the unit for specific periods of time?
- Is there evidence of the impact of the smoke on your health or the health of your family?
- How many witnesses do you have to testify to the amount and frequency of smoke infiltrating your home?
- Do you have supporting letters or affidavits from friends, family and neighbours and are they willing to testify either in person or by teleconference?

3. What effect did the interference of the smoke have on your health?

- What health problems did you or your family experience due to exposure to the second-hand smoke?
- Did the smoke aggravate a pre-existing health condition, such as asthma, heart disease, high blood pressure?
- Do you have a letter from your physician to verify the effect of the smoke on your health?

4. What steps did you take to resolve the problem before applying for compensation?

- Did you take all reasonable steps to reduce the smoke entering your unit?
- Did you try to negotiate a solution with the landlord or smoking tenant?
- Did you turn down any compromise solutions offered by the landlord, such as: a move to another unit in the building or another complex owned by the landlord? Or a negotiation to limit the times the smoker smokes in the unit?
- If so, explain why the solution was not acceptable for you.

5. What steps did the landlord take to address the problem once you notified him/her?

- Did you notify the landlord that there was a problem, and provide sufficient time for him/her to address it?
- Did the landlord take reasonable steps to correct the problem? What was the outcome?
- Did the landlord offer a compromised solution? What was the outcome?
- Did the landlord try to seal the source of the smoke? What was the outcome?
- Did the landlord talk to the smoking tenant? What was the outcome?
- Did the landlord attempt to broker a compromised solution with all parties?
- What was the outcome?
- Visit the Residential Tenancy Branch (RTB) website for more information on completing an Application for Dispute Resolution Hearing.



Dispute resolution proceedings: Types of remedies to request (Source: Legal opinion posted on Websiste)

If you are considering filing an application for dispute resolution with the Residential Tenancy Branch due to a breach of quiet enjoyment pursuant to s. 28 of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 (the "Act"), you will be required to detail the nature of the dispute and request an order to remedy the situation and/or compensate for loss. The most common orders requested are detailed on the Residential Tenancy Branch's standard form "Tenant's Application for Dispute Resolution". In the case of an action for breach of quiet enjoyment a tenant would most commonly seek the following orders:

1. A monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
2. An order for landlord's action to comply with the Act, regulation or tenancy agreement;
3. An order for landlord's action to make emergency repairs for health or safety reasons; and
4. An order for landlord's action to make repairs to the unit, site or property.

Pursuant to s.64 of the Act, dispute resolution officers are not bound to follow past decisions and must make each decision based on the merits and evidence of each individual case. Additionally, at present, the Residential Tenancy Branch does not publish past decisions of dispute resolution officers. As a result, it is very difficult to predict the outcome of each individual case or provide examples of how past successful applications have framed their dispute and requested their order. Notwithstanding these difficulties, some possibilities based on known decisions from BC and other jurisdictions include orders for:

1. Repairs to a unit to stop smoke from migration into another unit as the smoke is interfering with a tenants quiet enjoyment (ss.28, 65 of the Act);
2. Landlord's compliance with the Act to ensure that the tenant is free from "unreasonable" disturbance from second-hand smoke infiltrating the unit (ss.28,65 of the Act);
3. Reduction in rent for period a tenant experienced significant interference with the use and enjoyment of unit (ss.28, 65, 67 of the Act)
4. Health related costs, such as medical expenses and supplemental costs related to health care (ss.28, 65, 67 of the Act)
5. Moving costs of the tenant if they are forced to move because of smoke, and the landlord was aware of the problem, but refused to take reasonable steps to rectify the problem (ss 28, 65, 67 of the Act)
6. Damages related to damage to furniture and other household items due to second-hand smoke infiltrating the unit (s. 67 of the Act)
7. Recovery of costs to pay for filing of a tenant's application for dispute resolution hearing (s.72 of the Act).

The above examples represent the most common orders a tenant may request in an application for dispute resolution for breach of quiet enjoyment due to second hand smoke disturbances. Depending on your specific circumstances however, further orders could be sought. When in doubt we recommend that you consult an appropriate professional or contact the Tenant Resource & Advisory Centre for more information on this issue.

Disclaimer – *The information contained in this section is of a general nature and is to be used for informational purposes only. This information should not be construed as legal advice. If you are unclear about your rights or responsibilities, we highly recommend that you seek legal advice from an appropriate professional.*