
TENANTS

How to Effectively Document the Problem of Second-Hand Smoke

All tenants are entitled to the right to quiet enjoyment in their home. However, if second-hand smoke is infiltrating your home, it is important to know that based on past decisions at the BC Residential Tenancy Branch, the bar is very high to prove that the amount of smoke is an unreasonable disturbance. It is not enough for you to show that unwanted second-hand smoke is present in your home. In order to increase your chances of success, you must provide evidence that the smoke is frequent, on-going and substantially interfering with your use and enjoyment of the unit. Temporary discomfort or inconvenience does not constitute a breach of quiet enjoyment.

Unfortunately, there are no guidelines in BC on what amount of smoke constitutes an unreasonable disturbance, and thus it is unclear as to what evidence is required in order to meet this test. (See quiet enjoyment for more information on the challenges of proving a loss of quiet enjoyment due to second-hand smoke) That is why it is so important to document the extent, severity and impact of the problem and collect as much evidence as possible to prove your case. Further, if your landlord refuses to take steps to address the problem and you choose to apply for a dispute resolution hearing, you will need ample evidence to prove your case.

Document the source and extent of the problem

Consider using our sample tenant log, found in the Tools & Resources section of the website, to track your efforts to address the problem.

- Identify how the smoke is entering your unit i.e. from your bedroom window; when you turn on your bathroom or kitchen fan, from the electrical outlets?
- Determine where the smoke is coming from i.e. neighbour's balcony, neighbour's inside unit, outside smoking area or some other channel?
- Identify how often the smoke enters your unit on a daily or weekly basis?
- Do you smell the smoke all the time, at certain times of the day – List the dates, times and frequency of occurrence.
- Identify how much smoke is entering your unit? This is difficult to assess, but is the smell overwhelming, or is there just a whiff of smoke? Does the smoke stay in one area or does it permeate other areas of the home? Does the smoke remain or does it subside after a time?
- Identify when the problem started? Did you start smelling the smoke as soon as you moved into your unit? Did you notice the smoke when a new resident moved in?

Document the health impacts on you or your family

- Document symptoms or illnesses caused by the smoke infiltrating your home. Symptoms may include asthma attacks, headaches, burning and watery eyes, sore throats, bronchitis, ear infections, heart problems, to name just a few.
- Indicate if the smoke is worsening a pre-existing health problem such as asthma, allergies, heart disease, high blood pressure, fibromyalgia, or cancer.
- Indicate whether the smoke seeping into your home is causing anxiety or fear due to the potential or actual health impacts on you or your family members.
- Indicate if you have a newborn in the family. Babies who are exposed to second-hand smoke have a higher risk of dying from Sudden Infant Death Syndrome (SIDS).

Document the impact on the use and enjoyment of your home

- Has the smoke resulted in a reduction in the value of your tenancy agreement? In other words, have parts or your entire home become uninhabitable at times?
- Are you forced to stay out of certain rooms because of the smoke?
- Are you unable to open your windows or balcony door?
- Are you unable to use your balcony because of the smoke?
- Are you unable to use your fans or heating system?
- Have you been forced to leave your home on certain days or at specific times to avoid the smoke?

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- Are friends and family with health conditions unable to visit you because of the smoke seeping into your unit?

Collect supporting evidence

- Did your landlord misrepresent the tenancy with assurances that the building was smoke-free? Do you have any witnesses to verify this discussion? Do you have a copy of the advertisement?
- Obtain written proof from neighbours, friends and family concerning the amount and frequency of smoke entering your home. The more people who can verify your complaint, the stronger your case.
- Obtain a letter from your physician to verify that the smoke is making you or your family members sick, or aggravating an existing condition or illness.
- If the smoke is excessive, try contacting your the local Health Protection Office. They may send out an Environmental Health Officer to ensure there are no violations of the Tobacco Control Act causing the smoke to enter your unit – i.e. smoking in common areas.