



Second-Hand Smoke in Multi-Unit Housing *A Tenant's Guide*



Who is this guide for?

This guide was created for Ontario tenants who fall under the *Residential Tenancies Act*. Tenants who are renting condominium units should note that not all the information in this guide applies to their situation because the landlord (i.e. the condo owner) will not necessarily be able to take legal measures to prevent smoke coming in from other units.

What is the issue?

At least 1 in 5 residents of multi-unit housing in Ontario are involuntarily exposed to second-hand smoke coming from outside their unit. Many tenants discover the problem after they have already moved in. Since second-hand tobacco and cannabis smoke represents a health hazard, this is cause for concern for everyone. For people who are especially susceptible due to health issues, such as asthma, it is a particularly serious problem.

Legal status of smoke-free policies

Not all landlords and tenants are aware that a smoke-free clause in a lease is legal and enforceable.

Tenants and landlords can agree to clauses that restrict smoking of tobacco and cannabis in specific places such as units and balconies. In fact, the Ministry of Housing's Standard Lease Template, required as of April 30, 2018 for use in most residential rental agreements in Ontario, contains a section that invites tenants and landlords to agree to restrictions on smoking that go beyond the *Smoke-free Ontario Act*.



Using sections of the *Residential Tenancies Act* such as 'Substantial Interference with Reasonable Enjoyment', landlords have successfully enforced smoke-free clauses at the Landlord and Tenant Board.

If your landlord is interested in creating a smoke-free policy, please ask him/her to go to www.smokefreehousingon.ca for more information.

Exposure to second-hand smoke is common in multi-unit housing apartments. Second-hand smoke (SHS) from tobacco, cannabis and other substances does not respect the boundaries of apartment units and easily travels from one unit to another.

Regardless of how well a building is built or maintained, air pressure between units and floors can cause air, including second-hand smoke, to travel through cracks, gaps, electrical outlets, phone jacks, ventilation systems, dropped ceilings, and from balconies.

Dealing with the problem of exposure to SHS in your own home can be a frustrating and confusing undertaking with no clear path to a good outcome.

Second-hand smoke is extremely toxic

Exposure to SHS is a known health hazard. It is not just an unpleasant odor like a cooking smell. Tobacco smoke exposure heightens the risk of cancer, heart, and respiratory illnesses, and exacerbates existing chronic diseases and conditions, such as COPD and asthma. Cannabis smoke contains many of the same toxic components and carries similar risk factors.



Smoking in multi-unit housing has been clearly identified as a health issue by numerous bodies. Health Canada points out that “children and adults who live in multi-unit dwellings where smoking is permitted have higher rates of exposure to second-hand smoke, even if no one in their home smokes”.

SHS is extremely toxic. It contains more than 4,000 chemicals. About 70 of these are known to cause cancer, such as arsenic, benzene, cadmium, chromium and formaldehyde.

Exposure to second-hand smoke causes serious health problems. According to Health Canada, the health risks include heart disease, lung cancer, emphysema, breathing problems (such as asthma), nasal and chest infections as well as ear infections.

Can smoke transfer be prevented through renovations and repairs?

Sometimes changes in the apartment can reduce the amount of SHS being transferred from unit to unit, but it cannot fully resolve the health problem.

Although some actions, such as sealing cracks, may reduce smoke transfer, repairs will not eliminate all the second-hand smoke.

The American Society of Heating, Refrigerating and Air Conditioning (ASHRAE) issued a report on the subject and its major findings include:

- At present, the only means of effectively eliminating health risks associated with indoor exposure is to ban smoking activity.
- No other engineering approaches, including current and advanced dilution ventilation or air cleaning technologies, have been demonstrated or should be relied upon to control health risks from environmental tobacco smoke exposure in spaces where smoking occurs.



What does the law say about smoking in multi-unit housing?

Under the *Smoke-Free Ontario Act*, smoking tobacco, or cannabis, and the use of electronic cigarettes (vaping) is prohibited in the enclosed common areas including lobbies, elevators, hallways, parking garages, etc.* It is the responsibility of the landlord to post required ‘**No Smoking**’ signs and to ensure that the law is followed. If there is a problem in your building with smoking in enclosed common areas, contact your local Public Health Unit.

In some cases, municipalities may have laws that go further. For example, some municipalities ban smoking outside of building entrances.

Provincial and municipal laws do not ban smoking in private units or on balconies and patios in multi-unit housing

The *Residential Tenancies Act* balances the rights and responsibilities of landlords and tenants and provides the opportunity for dispute resolution at the Landlord and Tenant Board. Under the law, tenants have a right to reasonable enjoyment, which is the right to use and enjoy their unit and to be protected against interference by the landlord or other tenants.

*As of the time of printing, March 2018, regulations for cannabis and electronic cigarettes were not yet in-force. However, they are expected to be in the near future. For their current status please see www.ontario.ca/laws



In some cases, adjudicators at the Landlord and Tenant Board have determined that exposure to SHS constituted a breach of reasonable enjoyment.

The Ontario Human Rights Code protects people from discrimination on many grounds, including disability. Tenants with health conditions made worse by exposure to SHS, such as asthma, may be able to apply to the Ontario Human Rights Tribunal if they are able to demonstrate that they have a disability and that the actions of the landlord (i.e., failing to protect them from exposure to second-hand smoke) are discriminatory.

The Ontario Human Rights Commission has written about smoking. In their 2009 Policy on Human Rights and Housing, they said:

It is clear that cigarette smoke can have a detrimental effect on the health and well-being of others, particularly people with respiratory and chemical sensitivity-related disabilities, pregnant women and children. Landlords may be asked to provide accommodation to tenants whose disabilities are worsened by exposure to second-hand smoke.

Please note that in some cases a landlord may be required to allow the smoking of medical cannabis.

What should I do?

1. Make sure your landlord knows that smoke-free clauses are legal and enforceable. Some still believe that it is not practical or even illegal. Smoke-free lease clauses are legal in Ontario and are increasingly popular. Several leading private sector property managers and landlords already include smoke-free clauses in their leases. Please also let them know that given the choice, 80% of tenants would choose a smoke-free building over one that allows smoking. If approached, your landlord might be glad to work with you to resolve the issue.
2. Write a letter of complaint to your landlord. Written complaints will be taken more seriously than verbal ones and will also provide a paper trail if you end up taking your landlord to the Landlord and Tenant Board for dispute resolution.
3. Try to block the smoke entering your unit by sealing up cracks and gaps. Ask the landlord to check the ventilation system to make sure that it is operating properly.



4. Consider getting a letter from your doctor stating the importance of avoiding exposure to SHS. If you have a health condition made worse by exposure, your doctor can emphasize your particular need for smoke-free air. Share this letter with your landlord.

5. Carefully document the problem. Keep a log with dates and times detailing every time smoke enters your unit, where it enters, how it affects you, and everything that you do to try to address the problem. This is vital—without sufficient documentation and other evidence, it

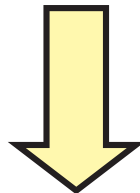
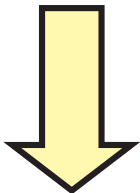
can be difficult to prove that the SHS infiltrating your home is an “unreasonable” disturbance that has resulted in a loss of your reasonable enjoyment. (see Page 6 for a sample log)

Should I Stay or Should I Move Out?

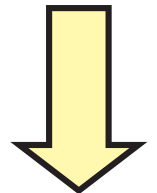
1. Make sure your landlord knows that smoke-free clauses are legal and enforceable. Some still believe that it is not practical or even illegal. Smoke-free lease clauses are legal in Ontario and are increasingly popular.
2. Write a letter of complaint to your landlord. Make sure you date it and keep a copy.
3. Ask the landlord to try to block the smoke from coming in, or try to do it yourself. If applicable, ask the landlord to also check the corridor ventilation system as well as individual kitchen and bathroom fans.
4. Consider also getting a letter from your doctor stating your need to avoid SHS exposure. Any health conditions made worse by exposure should be emphasized.
5. Carefully document the problem.

I'm going to stay

I'm going to move out



In writing, ask the landlord to break your lease without penalty.



If you feel that the landlord has not reasonably responded to your complaints and you've run out of options, file an application at the **Landlord and Tenant Board**, citing breach of reasonable enjoyment. You can call the Board or visit it online for more information. If your Landlord and Tenant Board application is dismissed and you have a health condition that is made worse by exposure, consider filing a human rights complaint at the **Human Rights Tribunal of Ontario**, citing discrimination based on disability.

If the landlord agrees

www.smokefreehousingon.ca has a list of landlords with no-smoking policies. Or look for an apartment online using search terms like "smoke-free" or "no-smoking." Ask lots of questions before you sign the lease. You could still be exposed to smoke even if a unit is advertised as smoke-free, because landlords must exempt current tenants when they adopt no-smoking policies.

If the landlord does not agree

You will need to file an **Application About Tenants Rights (T2) with the Landlord and Tenant Board**, requesting that the tenancy be terminated because of "serious interference with reasonable enjoyment".

Should I stay or move out?

If you feel that your best efforts to resolve the problem have failed and that your landlord has not responded reasonably to your complaints, it's time to decide whether you are going to stay or move out.

Staying will involve filing an application for adjudication at the Landlord and Tenant Board, citing breach of reasonable enjoyment. In terms of remedies (solutions), you could ask the Landlord and Tenant Board to order your landlord to undertake specific repairs or modifications to the unit or building. Another possible remedy is a rent reduction until the landlord is able to effectively prevent continued exposure. This could possibly include the landlord issuing a Notice to Terminate a Tenancy Early (N5) to the offending tenant.



Note:

- You can access free legal advice from duty counsel the day of the hearing.
- Provide as much documentation about the smoke infiltration as possible as well as evidence that your landlord failed to respond appropriately.
- You will be asked to participate in mediation prior to a hearing. This may be a good opportunity to come to an agreement with your landlord.
- Each case at the Landlord and Tenant Board is different and is decided on the facts of the case by an adjudicator. That makes it difficult to predict the outcome.

It may help your case if you make it clear that the exposure to smoke is occurring on a regular basis and that it is interfering with your ability to live normally in your apartment. Examples could include not being able to open windows or use your balcony or having to sleep in another room because the air quality in the bedroom is so poor. Arguments like this can be made stronger by referencing health problems experienced due to the smoke.

If you decide to cut your losses and move out, you can either give your landlord 60 days' notice as required by law if your lease is 'month to month', or you can request in writing to break your lease without penalty. If your landlord denies your request, you have the option of filing an Application About Tenant Rights (T2) citing breach of reasonable enjoyment and requesting termination of the tenancy on the date of your choice.

A T2 can also be submitted after you have already moved out, requesting compensation for moving costs.

These forms and other information are available on the Landlord and Tenant Board's website:
www.sjto.gov.on.ca/ltb/

Sample Tenant Log

Document your efforts to address second-hand smoke infiltrating your home.

Complaint Log

You can use the form below to document when the smoke enters your home from a neighbouring unit, and everything you do or say to resolve the problem, including talking to your landlord or superintendent. This information will be useful when approaching your landlord to show how serious the problem is and how often the smoke enters your home.

It will also be important if you decide to make an application to the Landlord and Tenant Board due to breach of your right to the reasonable enjoyment of your home.

Include dates, times and names of all people that you communicate with and be sure to keep copies of all correspondence for your files. When documenting each incident, answer the following questions:

1. Where is smoke coming from and how it is entering your home? Include dates and times.
2. How is the smoke affecting the health of you or your family?
3. How is the smoke interfering with the use and enjoyment of your home?
4. What have you done to try to rectify the problem (communications or steps taken, e.g. sealing cracks and gaps)? What happened?

Sample Tenant Log

DATE	TIME	NOTES
October 23, 2017	8 a.m.	Woke up wheezing and coughing because of smoke entering my bedroom window from neighbour's balcony (unit #6). Asked neighbour to smoke somewhere else but she said she has the right to smoke on her balcony.

Smoke-free Housing Ontario is a project of the Smoking & Health Action Foundation supported by the Ontario Ministry of Health and Long-Term Care.

**For more information about smoke-free housing
www.smokefreehousingon.ca
or contact your local Public Health Unit.**

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