

FACT SHEET

INFORMATION FOR

TENANTS ON DRIFTING SECOND-HAND SMOKE IN MULTI-UNIT DWELLINGS



Unwanted second-hand smoke drifting into homes from neighbouring units is a problem for many people living in multi-unit dwellings, such as apartments, condominiums, townhouses and suites in homes. Second-hand smoke not only causes discomfort and annoyance, it is a serious health hazard that causes cancer, heart disease, respiratory diseases and many other illnesses in both adults and children.

If you live in a building that allows smoking, and you are suffering from unwanted smoke drifting into your home from another unit, there are no clear-cut solutions to this problem. This fact sheet is intended to provide information about this emerging public health issue, and provide some steps you can take to minimize your risk of being exposed to second-hand smoke in the home.

What Are Your Rights?

- In BC, private residences are not covered under existing legislation that regulates smoking in public places and workplaces. Currently, there are no laws that protect people from unwanted second-hand smoke drifting into their homes. According to the BC Residential Tenancy Act, all tenants have the right to “quiet enjoyment” of their premises, including the right to be free from the unreasonable disturbances of other tenants.

While it might seem logical to conclude that exposure to a known cancer-causing substance would be a significant interference with your enjoyment of the premises, if your tenancy agreement does not include a “no smoking” clause, the right to “quiet enjoyment” does not specifically include the right to be free from drifting smoke.

- Many municipalities in BC have bylaws that ban smoking in public areas of buildings, including hallways, stairways, elevators, lobbies and laundry rooms. Contact your local Health Authority or Municipal Bylaw Department for more information.
- In BC, it is legal for landlords to choose to have a smoke-free policy included in the rental agreement to ban smoking in all or part of a building, including the individual units and outdoor balconies. While this cannot be done retroactively, it can be phased-in over time by converting vacating units into smoke-free units.
- **The bottom line – if you want to live in a building free from drifting smoke, ensure that there is a “no-smoking” clause in your tenancy agreement that states the entire building is smoke-free, including the units, common areas and outdoor balconies and patios.**

Possible Options For Protecting Yourself From Exposure To Drifting Smoke

- Talk to your neighbours first and try to negotiate an amicable solution. Let your neighbour know that you are having problems with the drifting smoke, that you are concerned about your health, and that you want to work out a mutually satisfying solution.
- If the problem continues, write a letter to your landlord about the behaviour that is disturbing you and request assistance in resolving the problem. Your landlord has a responsibility to act on all reasonable complaints.



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- Remind your landlord that many activities in private dwellings are currently regulated, such as loud noise and barbecuing, especially if it negatively impacts other tenants. Landlords have the authority to restrict or ban activities that unreasonably interfere with the “quiet enjoyment” of other residents in the building.
- Get a note from your doctor to support your complaint if you have a chronic illness or condition made worse by exposure to second-hand smoke, such as asthma, allergies or heart disease.
- Minimize the drifting smoke by plugging electrical outlets and weather stripping doors. Request that your landlord make all reasonable repairs to correct the problem, including sealing cracks and upgrading or cleaning filters in ventilation systems.
- If the problem is not addressed to your satisfaction, find allies in the building to help you. Most British Columbians don't smoke (84%), so you are likely not the only one who is suffering from drifting smoke.
- Talk to your landlord about creating a smoke-free policy. Seek support from other residents to encourage the move toward a partial or a complete smoke-free building, including outdoor balconies.

If All Else Fails

If the problem continues after you have taken all reasonable steps to negotiate a solution, or your landlord refuses to assist in resolving the problem, contact the Residential Tenancy Office or the Tenant's Rights Action Coalition (TRAC) to discuss your options, including the possibility of applying for arbitration on the basis of breach of “quiet enjoyment”. While there is limited case law to protect tenants from exposure to second-hand smoke in private dwellings, there is a body of case law emerging in Canada and the U.S. that may lead to a difference in how arbitrators rule on this issue in BC.

Did you know that Ventura County, California is considering regulations that would require developers, who receive city assistance to build affordable housing, to ban smoking in a third of all units. (Source: Ventura County (CA) Star, 2004-09-09
Author: Grace Lee)

What Else Can You Do?

Lobby your municipal and/or provincial government to enact laws that protect people living in multi-unit dwellings from the dangerous effects of drifting second-hand smoke. Examples include:

- Amending residential tenancy legislation to specifically include exposure to second-hand smoke as a basis for claiming a breach of “quiet enjoyment”.
- Banning smoking in all public areas of residential buildings.
- Requiring that a percentage of all future residential buildings being developed, be designated as smoke-free.

Resources in BC

The Residential Tenancy Office

Toll-Free at 1-800-665-8779

The Tenants Rights Action Coalition (TRAC)

(604) 255-0546 in Vancouver or

Toll-Free 1-800-665-1185 outside Vancouver

Health Inspectors/Environmental Health Officers

Contact the Public Health Unit of your Regional Health Authority or your Municipal By-law Department

WEB RESOURCES

Health Canada's Go Smoke Free

www.gosmokefree.ca

Clean Air Coalition of BC

www.cleanaircoalitionbc.com

Physicians for a Smoke-Free Canada

www.smoke-free.ca

The Smoke Free Network

Discussion and information group on drifting smoke from neighbouring units

www.smokefree.net/smoke-free-apartments-talk

Ontario Campaign for Action on Tobacco

www.OCAT.org