
SECOND HAND SMOKE: YOUR OBLIGATION TO ACT

A recent decision by the Human Rights Tribunal has set out a suggested protocol for multi-unit housing operators to follow when confronted with a second hand smoke complaint by a disabled occupant. to how parties should deal with second hand smoke issues. The Complainant in *Leary v. Strata Plan VR1001, 2016 BCHRT 139*, was a strata lot owner while the Respondent was a strata corporation. Nevertheless, the principles expressed by the Human Rights Tribunal should be equally applicable to landlords, co-operative housing associations, and housing corporations.

The Tribunal set out the following suggested guidelines for parties dealing with second hand smoke issues.

The Strata Lot Owner should:

- Advise the strata council of their disability. The person must provide enough information for the strata council to understand that the person has a disability that is negatively affected by second-hand smoke in the strata.
- Co-operate with the strata to provide sufficient medical information to meet these goals. This may include a medical report. A brief doctor's note on a prescription pad will probably not be comprehensive enough to establish the need for accommodation and allow the parties to understand what options are appropriate.
- Co-operate with the strata to discuss possible solutions. The person seeking the accommodation is not entitled to a *perfect* accommodation, but to one that reasonably addresses their needs and upholds their dignity in their housing.
- Co-operate with professionals or other parties who may have to be involved to explore accommodation solutions. A person may have to facilitate access to their unit and ongoing requests for information.

The Strata Corporation should:

- Address requests for accommodation promptly, and take them seriously. A strata should consider how it will process accommodation requests on a timely basis, including between council meetings. For example, the strata council should

ensure that someone is responsible for receiving such requests and promptly beginning the accommodation process.

- Gather enough information to understand the nature and extent of the need for accommodation. The strata is entitled to request medical information that is related to the request for accommodation. It is not entitled to any more information than is strictly necessary for this purpose. If the strata requests further medical reports, it should be at the strata's expense.
- Restrict access to a person's medical information to only those individuals who are involved in the accommodation process and who need to understand the underlying medical condition. The strata council should keep medical information confidential from the general membership of the strata.
- Obtain expert opinions or advice where needed. For second hand smoke, a "sniff test" undertaken by another strata member will rarely be sufficient to evaluate the extent of a problem with smoke in an suite. The strata may have to retain air quality experts. The strata should pay for any tests of expert reports.
- Take the lead role in investigating possible solutions. Co-operate with the person seeking the accommodation to constructively explore those solutions.
- Rigorously assess whether the strata can implement an appropriate accommodation solution. In doing so, the strata may have to consider the financial cost and competing needs of other strata members with disabilities. In some circumstances, a solution may not be possible without the strata suffering undue hardship. In the case, the strata council should document the hardship and test its conclusion to ensure that there is no other possible solution.
- Recognize that the strata cannot, through its membership, contract out of the *Human Rights Code*. This means that a strata cannot rely on a vote of its membership to deny an accommodation.
- Ensure that the strata representatives working on the accommodation are able to approach the issue with an attitude of respect. Members of a strata council whose behaviour risks undermining genuine efforts at co-operation and conciliation may need to be removed from the process.

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