

SAMPLE TENANT COMPLAINT LETTER

Requesting landlord take steps to reduce or eliminate the problem of second-hand smoke

This sample letter is designed for tenants who are being involuntarily exposed to second-hand smoke infiltrating their homes from a neighbouring unit. If a neighbour's smoke is infiltrating your unit on a frequent and on-going basis and substantially interfering with your reasonable enjoyment of your unit, your landlord has a responsibility to remedy the situation.

It is imperative that you document the extent, frequency and impact of the smoke entering your home, as well as all communications and actions related to the problem. Be sure to retain a copy of each letter you send to your landlord. (See the 'Taking Action' section of our website for more information.)

Steps	Examples
<p>Describe the source and extent of the problem.</p> <p>If this is your first letter, start on a positive note.</p> <p>Landlords get lots of complaints, so start by explaining why you like your unit or the building. Describe how often the smoke is coming in, where it comes from and be sure to emphasize that it is more than a temporary discomfort or inconvenience.</p> <p>Identify:</p> <ul style="list-style-type: none"> • When the problem first started; • How the smoke is entering your unit (i.e. through open patio doors); • Where the smoke is coming from (i.e. upstairs neighbour's balcony); • How often the smoke enters your unit on a daily or weekly basis. List dates, times and frequency of occurrence; • How much smoke is entering your unit. Does the smoke stay in one area or does it permeate other areas of your home? <p>For second-hand smoke to qualify as a breach of your reasonable enjoyment, it must be frequent, ongoing and substantially interfere with your normal use and enjoyment of the apartment.</p> <p>(See 'last resort remedies' section of our website for more information on reasonable enjoyment and second-hand smoke.)</p>	<p>Dear (Landlord),</p> <p>Re: Loss of reasonable enjoyment due to second-hand Smoke</p> <p>I am a tenant residing at (enter address) and have been paying the current rent of (\$ amount) per month since (anniversary date on tenancy agreement). I like living here, and until now, I have enjoyed my tenancy. (If you don't want to move, emphasize that here).</p> <p>Unfortunately, I am currently faced with second-hand smoke coming into my unit from [enter the unit number if you know where the smoke is coming from]. The smoke comes in through the closet in my daughter's bedroom, and also seems to be coming in through the gaps around the plumbing under the bathroom cupboard. It is definitely worse in the evenings and weekends when our neighbour is home. It happens every single day without fail.</p> <p>(See attached log with the times and dates the smoke has entered my home.)</p>

Steps	Examples
<p>Describe how it has impacted your health.</p>	
<p>Identify: Symptoms or illnesses caused by the smoke, including asthma attacks (and the need for a puffer if none was required before), headaches, burning/watery eyes, sore throats, bronchitis, ear infections, heart problems, etc.</p> <ul style="list-style-type: none"> • Is smoke worsening a pre-existing health problem such as asthma, allergies, heart disease, high blood pressure, fibromyalgia, or cancer? • Do you fear for the health of your infant? Babies who are exposed to second-hand smoke have a higher risk of dying from Sudden Infant Death Syndrome (SIDS). 	<p>I am very concerned about my daughter's health. She has asthma and I have noticed she is coughing more and needs to use her puffer at night, something she didn't previously need to do.</p> <p>I am enclosing a letter from our family doctor stating that my daughter should not be exposed to second-hand smoke and that she could suffer a serious asthmatic attack.</p> <p>Also, I have started to suffer from frequent headaches, something I have never had before. I don't get them when I am away from the apartment, so it is clearly linked to the smoke.</p>
<p>Describe how the smoke has denied you full use and enjoyment of your home.</p>	
<p>Identify:</p> <ul style="list-style-type: none"> • Has all or parts of your 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? • 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? • Are friends and family unable to visit you because of the smoke? <p>This is especially important if apply to the Landlord and Tenant Board for a dispute resolution hearing. Past LTB decisions indicate it is not sufficient to simply prove that smoke is present in your home. You need to provide extensive evidence demonstrating the extent and frequency of the smoke and how it is causing a loss of your reasonable enjoyment.</p>	<p>Because the smoke infiltration is significant in my daughter's bedroom, she now sleeps in my room on a cot. We keep her bedroom door closed all the time, so unfortunately we don't have use of this room anymore, despite paying for a two-bedroom apartment.</p> <p>We also are forced to keep our windows open day and night to try to air out the unit, but now that the weather is getting colder, we won't be able to keep the windows open as often.</p> <p>Further, we can't afford the extra heating costs because we have to keep the windows open in the winter. We are very fearful that with the coming cold months, the problem will worsen.</p>
<p>Describe what steps you have taken to resolve the problem yourself.</p>	
<p>Past Landlord and Tenant Board decisions indicate that cases are generally looked upon more favourably if tenants can show that they have taken steps to address the problem themselves first.</p>	<p>I have tried using duct tape to block the cracks, and seal the gaps around the pipes in the bathroom, but it hasn't stopped the smoke from entering our home. As indicated above, we keep our daughter's bedroom door closed all the time, and keep our windows open day and night to try to air out the unit.</p> <p>We also tried to politely talk to our neighbour about the problem, but he only got mad, and said that he could do what ever he wanted in his own home.</p>

Steps	Examples
Collect and attach supporting evidence.	
<p>Identify:</p> <ul style="list-style-type: none"> • Did your landlord misrepresent the tenancy with assurances that the building was smoke-free? • Do you have any witnesses who could vouch for you? • Do you have a copy of the advertisement? • Obtain written proof from neighbours, friends and family concerning the extent 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. 	<p>Please find the attached documents that support my claim of a loss of reasonable enjoyment.</p>
Provide information about the dangers of second-hand smoke. (Optional)	
<p>For more information on the dangers of exposure to second-hand smoke go to the US Surgeon General's Report at:</p> <p>www.surgeongeneral.gov/library/secondhandsmoke/</p>	<p>Second-hand smoke is a serious health hazard that can lead to disease and premature death in children and nonsmoking adults. There is no known safe level of exposure. Even brief exposure can be harmful to people's health. Second-hand smoke:</p> <ul style="list-style-type: none"> • Is poisonous, and exposes residents and families to over 4,000 chemicals; • Contains more than 50 chemicals that are known to cause cancer in humans; • Is a class 'A' cancer-causing substance ranked with the most deadly substances, including benzene, chromium, cadmium, and arsenic.

Steps	Examples
<p>Make your request.</p> <p>If the building is a no-smoking building, ask the landlord to enforce the no-smoking policy. If smoking is permitted in the building, some sample requests include:</p> <ul style="list-style-type: none"> • That your apartment (and that of the smoker) be sealed to minimize air transfer. This may help a bit, but realistically won't permanently stop the problem; • That your landlord talks to the tenant who smokes to negotiate a solution, like smoking outside. However, if this does not stop the smoke transfer, request that the landlord take steps up to and including evicting the smoking tenant. (Be prepared to accompany your landlord to the Landlord and Tenant Board to testify.) • That you be moved to another unit in the same building, or another building owned by the landlord; • That you be freed from your lease without penalty (you could even try asking your landlord to pay for your expenses; <p>Although it won't help your current situation, you could also request that the landlord adopt a no-smoking policy for new tenants.</p>	<p>The situation has become utterly intolerable and I need your help.</p> <p>Given the seriousness and urgency of the situation, I am asking that you talk to this tenant and ask him for his cooperation in not smoking in his unit.</p> <p>We can see if this will stop the smoke from entering my apartment. However, if this does not solve the problem, or he does not want to try a compromise solution, then I would ask that you consider applying to terminate his tenancy and evict him for causing the loss of my and my daughter's reasonable enjoyment of our home.</p> <p>I promise that I will support your actions, and that if he should dispute the application to terminate his tenancy, I am prepared to accompany you to the Landlord and Tenant Board for a dispute resolution hearing.</p>
<p>Ask for a response by a specific date.</p> <p>If your landlord does not respond by the date you request, you will need to apply for a hearing at the Landlord and Tenant Board, or consider moving to protect your health.</p>	<p>I would appreciate a written response to my letter within two weeks so that I can move forward on this issue knowing your position.</p> <p>Thank you very much for your assistance on this important matter.</p> <p>Sincerely,</p>
<p>Deliver the letter.</p> <p>Either post or hand deliver the letter, and be sure to keep a copy for yourself.</p> <p>The hope is that the problem can be solved amicably. However, if all else fails, you may consider filing a T2 form (Application About Tenant Rights) for with the Landlord and Tenant Board citing breach of reasonable enjoyment.</p> <p>This is generally seen as a last resort as it can be time-consuming, divisive, and the bar is high to prove a loss of reasonable enjoyment due to second-hand smoke. There are no guarantees that you will win.</p> <p>Nonetheless, if you choose to pursue this route, we suggest that you review the 'last resort remedies' section of our website for more information, as well as the 'case law' section to see the outcomes of other tenants' applications.</p>	<p>Consider copying your letter to government officials and health-related agencies.</p> <p>Copies to:</p> <ul style="list-style-type: none"> • City Councillor • MPP • Minister of Municipal Affairs and Housing • Minister of Health Promotion • Non-Smokers' Rights Association • Ontario Tenants Rights