

Smoke-Free Housing Q & A for Private Landlords

If smoking is legal, do landlords have the right to ban smoking in rental units?

Landlords have the legal right to set policies or make restrictions to protect the health and safety of their residents and protect their property, so long as the policy does not conflict with federal or provincial laws. Adopting a non-smoking policy is similar to adopting other policies such as a 'no barbecues' or a 'noise-level' policy. Depending on how it is written, a no smoking policy can ban the use of lit tobacco products (e.g. cigarettes, cigars, cigarillos, hookahs) and e-cigarettes within indoor units, on patios and balconies, or on all property, including grounds surrounding the building.

Are there other Smoke-Free private landlord providers in Ontario?

Yes, there are many examples of private landlords within Ontario and across Canada who have adopted smoke-free policies within their rental units. Domicile Developments, Drewlo Holdings Inc., Schlegel Villages and AON Inc. are examples of corporations that have successfully implemented Smoke-Free policies within their holdings, including properties located within Halton Region. In addition, there are also over 100 non-profit housing corporations and many co-operative housing boards who have implemented smoke free policies.

Do tenants not have a right to do as they wish in their own homes – such as smoke?

No. There is no such thing as a right to smoke under the Canadian Charter of Human Rights and Freedoms or under the Ontario Human Rights Code. While a tenant who smokes chooses to accept the known risks associated with smoking, he or she doesn't have the right to require others in the building to share those risks.

Are existing tenants and their guest(s) allowed to continue to smoke in their units if their building has been designated as “smoke-free”?

Yes. Existing tenants will be “grandfathered” under any new policy, unless they agree to re-sign a new lease which includes the non-smoking policy clause within, or move to a new apartment within the building. Under the Residential Tenancies Act, 2006 a landlord cannot change an existing tenancy agreement without the approval of the tenant. This means that tenants without a no-smoking clause in their tenancy agreement can continue to smoke in their units for the length of their tenancy.

How is a smoke-free policy enforced?

Smoking in violation of a no-smoking policy is not considered a material breach of the lease. Enforcement of a Smoke-Free policy is based upon breach of reasonable enjoyment, substantial interference with another lawful right, privilege or interest of the landlord, damage, or safety, etc.

Similar to other smoking-related policies, landlords should clearly communicate the details of the lease's no-smoking policy with new and existing tenants, including expectations for compliance, and consequences of smoking in the home/non-compliance.

Could a tenant be evicted if they are not complying with the Smoke-Free policy? On what grounds could they be evicted?

It is not the intent of a Smoke-Free policy to evict individuals; however, as a last resort it is possible to evict a smoker on the grounds of “interfering with the reasonable enjoyment of others”. If warranted, an N5 form Notice to Terminate a Tenancy Early can be issued if it can be proven that the smoke is infiltrating the homes of other tenants, and there is evidence that the smoke infiltration is severe enough to cause an unreasonable disturbance.

Is it sufficient to use air filters/purifiers or ventilation to clean the air of second-hand smoke?

Air filters, purifiers and ventilation systems cannot eliminate second-hand smoke, nor can they address the health concerns of exposure to second-hand smoke. Some of the smoke and larger particles from the air may be removed, but they will not remove the smaller particles or gases found in second-hand smoke. As a landlord, if a resident has signed a lease that includes a Smoke-Free policy and smoking occurs within their unit, you have the right to enforce the Smoke-Free policy, regardless of any additional precautions taken by the smoker to eliminate the smell or exposure to second hand smoke.

How dangerous is second-hand smoke?

Each year in Canada, breathing second-hand smoke causes more than 1,000 deaths in non-smokers from lung cancer and heart disease, and keeps thousands more from leading normal, healthy lives. The US Surgeon General's Report warns that no amount of second-hand exposure is safe. Major conclusions from the report reveal that:

- There is no risk-free level of exposure to second-hand smoke;
- Second-hand smoke causes premature death and disease in children and adults who do not smoke;
- Exposure to second-hand smoke, even in small quantities, can worsen pre-existing health conditions, such as asthma, allergies, rhinitis, COPD & other breathing conditions, and heart disease;
- Eliminating smoking in indoor spaces fully protects non-smokers from exposure; and
- Separating smokers from non-smokers, cleaning the air, and ventilating buildings cannot eliminate the exposure of non-smokers to second-hand smoke.

Second-hand smoke increases risk of heart disease and lung cancer

- Concentrations of cancer-causing and toxic chemicals are potentially higher in second-hand smoke than in the smoke inhaled by smokers; and
- Chronic exposure to second-hand smoke increases a non-smoker's risk of developing heart disease by 25 to 30 per cent and lung cancer by 20 to 30 per cent.

Second-hand smoke causes acute respiratory problems

- Persons with asthma or other respiratory conditions are at especially high risk, and should take extra precautions to avoid breathing second-hand smoke.

Exposure to second-hand smoke harms children

- Babies exposed to second-hand smoke are at a greater risk for sudden infant death syndrome (SIDS);
- Babies exposed to second-hand smoke have weaker lungs than unexposed babies, which increases the risk for many health problems, such as breathing issues;
- Toddlers and older children exposed to second-hand smoke are more likely to experience and suffer from recurrent ear, nose and throat infections such as asthma, bronchitis, and pneumonia, and miss more school days; and
- Young girls exposed to second hand smoke are at higher risk for breast cancer later on in life.

In addition, findings from a 2011 research study out of Concordia University and the University of Montreal showed that tweens, aged 11 to 13 years old, were more likely to start smoking when they were exposed to second-hand smoke as well as others smoking around them.

Is there support for smokers who want to quit?

Halton residents who want to quit can receive support by calling the Halton Region Health Department at 311 Halton. Persons living outside of Halton Region can contact their local public health department to learn what quit smoking supports are available to them. All Ontario residents who are interested in quitting can call the Smokers' Helpline at 1-877-513-5333.

*Adapted with permission from United Counties of Leeds and Grenville