



# A Landlord & Property Manager's Guide to Smoke-Free Housing

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Save money, prevent property damage.  
Have happier tenants and a healthier building.

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## What is a smoke-free housing policy?

A smoke-free building means that, at a minimum, smoking is not allowed within any part of a building, including the units and balconies. This is a policy that goes above and beyond what is legally required under the *Smoke-free Ontario Act*.

The policy could include all combustible products such as tobacco (cigarettes, cigars, etc.), shisha and marijuana. However, the legal situation is less clear regarding the use of medical marijuana by those who have legal authorization for its use. Landlords may want to consider exempting medical marijuana from their policies.



## Who has put smoke-free policies in place in Ontario?

As of November 2016, thirty-eight municipally-operated housing providers in Ontario have put smoke-free policies in their leases. This includes housing providers such as Ottawa Community Housing, Housing York, Thunder Bay DSAAB, Cochrane DSAAB and Waterloo Region Housing.

There are also some leading private sector property managers and landlords who have implemented smoke-free policies, such as Realstar, Skyline Living and Drewlo Holdings.

## What are the Benefits of a Smoke-free Policy?

### Second-Hand Smoke Costs Money

It typically costs two to three times more to turn over a unit where heavy smoking has occurred, compared to a non-smoking unit. A 2009 study conducted by Smoke-free Housing New England found that it can cost up to an additional \$3,000 to get a unit ready for rental after being occupied by a heavy smoker.

A smoke-free policy eliminates burn marks in carpets and countertops; reduces costs related to frequent repainting and general maintenance and removes the problem of lingering second-hand smoke odours.

It is worth noting that 83% of Ontarians age 12 and over are non-smokers, according to the Canadian Community Health Survey (2014).

### Renters Prefer Smoke-free Homes

Given a choice, about 8/10 Ontarians would chose a smoke-free building, according to the research firm Ipsos. In addition, 89% of Ontarians think smoking in multi-unit housing should not be allowed, according to research reported by the Ontario Tobacco Research Unit in 2015.

Non-smoking homes are becoming the norm. Only about 17% of Ontarians age 12 and over smoke, according to the Canadian Community Health Survey (2014). Even many smokers do not allow smoking inside their homes. According to Health Canada, only 9% of homes have at least one regular smoker who smokes inside every day or almost every day (2015).

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**Ontario Tobacco  
Research Unit**

## Fire Safety

Removing the hazard of smoking lowers the risk of fire. According to fire loss statistics for 2009–2013 from the Ontario Office of the Fire Marshal and Emergency Management, “cigarettes, pipes, and cigars ranked as the number one ignition source for residential fire fatalities, and one in four home fire fatalities are caused by smoking articles.”

## A Healthier Indoor Environment

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.”

Second-hand smoke (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.

Many components of SHS are identified as toxic air contaminants and hazardous air pollutants by bodies such as the U.S. Environmental Protection Agency and the California Air Resources Board.

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



**Alex Freeman,  
Fire Prevention Officer,  
Markham Fire and  
Emergency Services**

“... careless use of smoking materials is a leading cause of fire and fire-related injuries in the home. Creating smoke-free housing removes one of the leading fire hazards affecting our community.”

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**Corine Brettell, Property  
Manager, Davis Drive,  
Non-Profit Homes Corp.**

“The Board of Directors understood the need to foster and promote a healthier living environment.”

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**“Children and adults who live in multi-unit dwellings where smoking is permitted have higher rates of exposure to second-hand smoke.”**

**Health Canada**



The risk of children's exposure to SHS is even greater because their lungs are still developing and they breathe more frequently. The health risks for them include: sudden infant death syndrome (SIDS), asthma, pneumonia and bronchitis.

Vulnerable populations, such as seniors, are also at greater risk of illness, as they are more likely to have chronic health problems, such as chronic obstructive pulmonary disease (COPD), heart conditions and living with cancer.

Pets such as dogs and cats are also at risk due to exposure to SHS.



When smoke-free policies are implemented, exposure to second-hand smoke drops dramatically. One study by the Minnesota Department of Health found an exposure drop of 46% once a smoke-free policy was introduced.

### **How Does Second-hand Smoke Get into Other Units?**

Second-hand smoke can infiltrate a unit from various sources, including:

- changes of air pressure, including the 'stack effect'
- patios or balconies, or from outdoor common areas
- open windows or doors
- electrical outlets, phone jacks, or ceiling fixtures
- cracks and gaps around sinks, windows, doors, floors and or walls or forced air systems

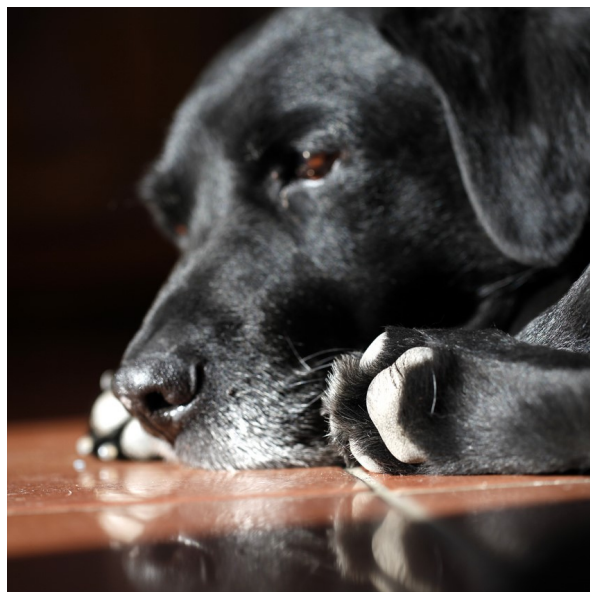
### **Can Smoke Transfer be Prevented Through Renovations and Repairs?**

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; 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 are the Legal Issues?

### Can a smoke-free clause be included in a lease?

Yes. Decisions by the Landlord and Tenant Board demonstrate and support the right to include a smoke-free policy in a lease. In addition, the Ministry of Municipal Affairs and Housing states on its website that “landlords and condominium corporations can ban smoking in new rental agreements or leases and bylaws.”

### What about the Ontario Human Rights Code?

The Ontario Human Rights Commission has written on this subject. They found that, “given the inherent risks associated with smoking, a housing provider may have little or no obligation to accommodate a tenant’s need to smoke when to do so would cause undue hardship, for example, by negatively affecting the health and safety of other tenants.”

Remember, smoke-free policies do not deny anyone a place to live. However, they do require that people engage in smoking outside the building, where they do not cause harm to others.

### What about the Canadian Charter of Rights and Freedoms?

The Charter only applies to the actions of government, including its agencies. As a result, it does not affect private landlords, but may affect non-profits who receive government funding.

The courts have made rulings stating that smoking is not a protected right under the Charter. A good example is the *McNeil v. Ontario* case from 1998. In that case, the judge ruled that “Nicotine addiction and the symptoms of withdrawal that result when one discontinues smoking are not a mental or a physical disability within the meaning of S 15 (1) of the Charter.”



**Carol Barber,**  
**Programs Manager –**  
**Housing Services Cochrane**  
**DSSAB**

“Smoke-free has been one of the easiest policies to implement.”

### How to Introduce a Smoke-free Policy

The easiest way to go smoke-free is to start smoke-free — if you have an empty building (either new or newly renovated), you can declare it 100% smoke-free from the beginning and have all new tenants sign a lease that includes a smoke-free policy.

Advertise your units as smoke-free; include your policy in the lease and be sure to post plenty of signage reminding your tenants of the rules. If you have a waiting list, future tenants will need to be informed of the policy too.

If you have a building with existing tenants, generally you will have to go smoke-free gradually by applying the rule to new tenants only. This process is called “grandfathering.”

You also can ask existing tenants to voluntarily sign an addendum to their leases agreeing to follow the smoke-free policy. Some property managers and landlords have provided incentives to sign addendums, such as coffee shop gift cards.

You may also wish to contact your local Public Health Unit or the Canadian Cancer Society's Smokers' Helpline for information and advice for people who wish to quit smoking. You can reach the Smokers' Helpline and get resources at [www.smokershelpline.ca](http://www.smokershelpline.ca).

*Important:* You should advertise that your building is transitioning to being smoke-free and that new tenants must follow your policy. To ensure compliance and to meet expectations, you should take every opportunity to tell potential tenants about the policy. Be sure to advise them if you are in transition (i.e. some tenants are still being 'grandfathered' and are still permitted to smoke in their units).

### **How do I ensure the policy is followed?**

The most effective way of enforcing a policy is effective communication. Make sure that your tenants and staff understand the policy and why you are implementing it. By taking the time to do this, people will be more likely to follow the policy.

When smoke-free policies are established, most people follow the rules. However, like other rules, there are some people who will not. In those cases, you should do your best to document the problem using tools such as log books and statements from third parties who confirm the presence of smoke.

You also should set up a system of progressive enforcement that begins with a notification that the tenant has violated the policy and potentially ends with an eviction order.

For example:

- Send a friendly written reminder clarifying the no-smoking policy on the first breach of the policy;
- Send a warning letter after the second breach (and x additional breaches) of the policy;
- Hold one or more meetings with the resident violating the policy to discuss the problem and to explore possible solutions;
- Follow up with a letter clearly summarizing the content of the meeting;
- Discuss possible accommodations. For example, team up with your local public health unit to provide smoking cessation information and support.

When pursuing formal legal action, it is best to consult with your legal advisors before filing at the Landlord and Tenant Board.



**“Make sure that your tenants and staff understand the policy and why you are implementing it.”**

## Sample Lease Language

Due to the known health risks of exposure to second-hand smoke, increased risk of fire and increased maintenance costs:

- A. No tenant, resident, guest, business invitee, or visitor shall smoke cigarettes, cigars or any similar product whose use generates smoke within the building, except those used for spiritual traditions e.g., smudge ceremonies. This prohibition includes all residential units within the building, all balconies and patios, enclosed common areas, as well as outside within nine metres of doorways, operable windows and air intakes.
- B. “Smoking” shall include inhaling, exhaling of any tobacco or marijuana, and similar product whose use generates smoke.
- C. “Business invitee” shall include but is not limited to any contractor, agent, household worker, or other person hired by the housing providers, tenant or resident to provide a service or product to the housing providers, tenant or resident.

Exceptions may be made on a case by case basis for tenants requiring the use of medical marijuana.

## If you are going to the Landlord and Tenant Board

### How does the Landlord and Tenant Board make decisions?

The Board makes decisions based on the evidence in front of them and the relevant law. They are not bound by precedent.

Evidence is weighed according to the “balance of probabilities”, which means the Board has to determine that something is more likely than not.

### How is the policy legally enforced?

Smoke-free policies are enforced under the *Residential Tenancies Act* using sections such as ‘Reasonable Enjoyment’. Second-hand smoke has been identified as a breach of reasonable enjoyment in several cases that have been heard by the Landlord and Tenant Board. With proper documentation, reasonable enjoyment has been used successfully to enforce smoke-free policies.

### What documentation is needed?

Documentation can include logs of when the smoking took place, statements from neighbours and others who witnessed evidence of smoking, photographs of stained walls and correspondence (including emails and text messages). The more documentation you can provide, the better.

Please visit [www.smokefreehousingon.ca/landlords](http://www.smokefreehousingon.ca/landlords) for more information.



**Smoke-free Housing Ontario is a continuing project  
of the Smoking & Health Action Foundation  
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Long-Term Care.**

**For more information about smoke-free housing  
[www.smokefreehousingon.ca](http://www.smokefreehousingon.ca)**

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