



COMMON QUESTIONS FOR LANDLORDS

The following information was developed for rental properties and condominiums but much of it is applicable to co-operative housing.

Is it legal to ban smoking in apartments or rented homes?

Yes. It is legal for landlords to adopt a no-smoking policy for new buildings, to introduce no-smoking policies in existing buildings and advertise the smoke-free building status to the public.

Landlords can ban smoking in rental units, including outdoor balconies, decks or any areas of the residential property.

A no-smoking policy is no different than a policy that prohibits pets, barbeques or loud noise. Yet many landlords are unaware of this important fact.

A landlord can establish reasonable rules that apply to residential premises. A written copy of these rules must be provided to a tenant prior to executing a lease.

A rule is reasonable if it:

- Promotes a fair distribution of services and facilities.
- Promotes the safety, comfort or welfare of persons working or residing in the premises.
- Protects the landlord's property from abuse.

A rule must be reasonably related to the purpose for which it was intended and it must apply to all tenants fairly.

An increasing number of landlords in Nova Scotia are creating rules that prohibit smoking in residential buildings. If a landlord wants to introduce a new no-smoking rule within an existing building, tenants must be given at least four months written notice prior to the anniversary date of their lease.

Do provincial or municipal governments have smoke-free laws that apply to residential buildings?

The *Smoke-Free Places Act* in Nova Scotia prohibits smoking in the common area of a multi-unit residential building, not limited to corridors, lobbies, stairwells, elevators, escalators, eating areas, washrooms and restrooms.

Note: This legislation does not apply to dwelling units or balconies in apartments or condominiums. It specifically avoids any attempt to regulate smoking in private residences.

If a no-smoking clause is written in the tenancy agreement, can a tenant be evicted for non-compliance?

Yes. If a no-smoking clause is written into the tenancy agreement or lease, a landlord can seek to terminate a tenancy if it is proven that the tenant has not complied with the terms of the tenancy agreement. The landlord should give the tenant a letter indicating that they are in violation of the tenancy agreement. This letter should give the tenant a reasonable time to stop smoking in accordance with the tenancy agreement and tell the tenant that failure to do so will result in the tenancy ending.

If smoking is legal, don't smokers have the right to smoke in their own homes?

There is no inherent right to smoke in law, and people who smoke are not a protected class under The Canadian Charter of Rights and Freedoms. Landlords own the property and have the ability to set policies to protect the health of their residents or protect their property, so long as the policy does not conflict with federal or provincial laws. Banning smoking is similar to adopting other policies like “no pets” and ‘no barbeques’.

Further, in tenancies where smoking is allowed, the right to smoke is not absolute and is limited by the right to occupancy without interference of neighbouring tenants. While a tenant that smokes chooses to accept the risks associated with smoking, he/she doesn't have the right to require that others in the building share in those risks.

Do tenants have the right to clean air?

While it is not clear that tenants have the right to a smoke-free living space, the *Residential Tenancy Act* states that tenants are to conduct themselves in a manner that does not interfere with the possession or occupancy of other tenants. This could include being free from breathing noxious or dangerous substances such as second-hand smoke on a frequent and prolonged basis (See [Interference with Occupancy](#)).

If smoking is allowed in the building, what can landlords do about complaints of second-hand smoke?

All tenants can expect freedom from unreasonable interference with their occupancy from other tenants.

If smoke from neighbouring units is significantly bothering other tenants, the second-hand smoke may be considered interference. Addressing the issue of second-hand smoke is similar to addressing the issue of loud music. Playing music is allowed in private units, yet when it's played too loud and interferes with the occupancy of other tenants, landlords can take steps to stop this intrusion, including last resort steps to end the tenancy. It is important to stress that there is a high threshold for what is considered interference when referring to second-hand smoke, and the mere presence of second-hand smoke in the past is not sufficient grounds for eviction. It must be frequent and ongoing.

If tenants can show that second-hand smoke has entered their home and is interfering with their occupancy, and the landlord has failed to take reasonable steps to address this problem, they may apply to the Residential Tenancies Program for compensation.

Can a landlord evict a tenant for smoking even if smoking is allowed in the residence?

A landlord who is notified of interference with the occupancy of another tenant due to second-hand smoke must take reasonable steps to confirm if it is occurring and is causing a significant disturbance to the affected tenant(s), and if so must then take reasonable steps to ensure that the breach does not continue.

Is there a market for smoke-free rental housing?

Adopting a no-smoking policy will provide landlords with a unique marketing advantage in Nova Scotia. A 2008 [survey](#) of Nova Scotians living in apartments and other multi-unit dwellings found that 35% would prefer to live in buildings that ban smoking in all units and on balconies and decks. Further, almost 80% of Nova Scotians do not smoke, yet there are few available smoke-free buildings for those who want and need to live smoke-free.

In 2006, Manitoba's largest landlord, Globe General Agencies, recognized this untapped marketing opportunity and implemented a no-smoking policy for all new tenancies in their apartment buildings in Manitoba, Saskatoon, Edmonton and Montreal. They found it was easy to do, reduced costs, and their turnover rates have dropped.

What are the benefits of adopting a no-smoking policy?

Going smoke-free is good for the health of residents, and good for business.

Going smoke-free will:

- Reduce maintenance, repair and clean-up costs.
- Reduce cigarette caused fires.
- Reduce complaints about second-hand smoke.
- Provide a unique marketing opportunity.

Are there health reasons for adopting a no-smoking policy?

Yes. Exposure to second-hand smoke is more than a nuisance. It is a serious health hazard that can lead to disease and premature death in children and non-smoking adults. There is no known safe level of exposure to second-hand smoke, and even brief exposure can be harmful to people's health.

Second-hand smoke is a major problem for many Nova Scotia residents living in apartments, especially those who suffer from chronic health conditions such as heart disease, asthma, allergies, diabetes, and respiratory illnesses. Landlords can play a significant role in eliminating a major cause of illness in the home and a major cause of preventable death in Canada by going smoke free in their buildings.

Are no-smoking policies difficult to enforce?

No. A no-smoking policy is just like any other policy or rule that a landlord can enforce. Plus, enforcing a no-smoking policy will likely be a lot less time consuming than mediating disputes between smokers and non-smokers where there is no policy in place. According to some landlords, no-smoking policies are largely self-enforcing. Also, once the policy is adopted, it's more likely that tenants will inform landlords of any breaches of the policy.

Can ventilation or air filters remove second-hand smoke from the air?

Air filters, purifiers and ventilation systems cannot eliminate 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.

The American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE), the world's leading association of heating and air conditioning engineers whose indoor air quality standards are followed internationally, considers that there is no acceptable ventilation system that can protect individuals exposed to second-hand smoke.

James Repace, an internationally recognized second-hand smoke physicist, conducted a review for ASHRAE on controlling tobacco smoke. He concluded that, “ventilation technology cannot possibly achieve acceptable indoor air quality in the presence of smoking, leaving smoking bans as the only alternative.”

Is there support for tenants who want to stop smoking?

There are many resources available in Nova Scotia to help people who are interested in stopping smoking.

Nova Scotians can access FREE stop smoking services, including group programs led by their district health authority Addiction Services staff, or phone support from a trained Quit Coach by calling 811.

Nova Scotians can also access an online interactive service, available 24 hours a day, 7 days a week, [Tobacco-Free Nova Scotia](#), which offers tips, tools and support to help you stop smoking.