Tenancies, rooming accommodation, discrimination and litigation

Residential tenancies in Queensland

A lessor must take reasonable steps to ensure a tenant has quiet enjoyment of the premises. If tenants have the same landlord in common, a neighbour’s smoke-drift may be taken up with their shared landlord in relation to the landlord’s duty to ensure the tenant has quiet enjoyment. A tenant may also ask a landlord to ensure that another of their tenants does not cause a nuisance or interfere with the reasonable peace and comfort of a neighbour.

In circumstances where neighbours share the same landlord, the Residential Tenancies Authority’s dispute resolution service may be used. The Authority encourages tenants and landlords to resolve disputes between themselves, and offers a conciliation service if this is not possible.

A tenant in a community titles scheme may also utilise the Body Corporate and Community Management Office dispute resolution service if they believe a neighbour is causing a nuisance in breach of the Body Corporate and Community Management Act 1997 (Qld). See the Information Sheet Smoke-drift in multi-unit housing: Private nuisance in Queensland community title schemes.

Rooming accommodation in Queensland

A person providing rooming accommodation may make house rules banning smoking. Even if house rules do not prohibit smoking in the private rooms, smoking is prohibited in all enclosed common areas of multi-unit residential accommodation. See the Information Sheet Smoke-drift in multi-unit housing: Regulation of smoking in Queensland for more information on smoking bans.

A person providing rooming accommodation must take steps to ensure residents have quiet enjoyment of their room and the common areas. A resident is also obligated not to interfere with the reasonable peace and comfort of another resident.

The Residential Tenancies Authority’s dispute resolution service is available to providers and residents where negotiations or dispute resolution between them has failed.

Discrimination

Banning smoking is not discriminatory. The owner of a unit or building can stipulate the terms on which tenants or guests may rent or use their premises, including a complete or partial ban on smoking.

Permitting smoking in certain public places can be discriminatory. Whether a building owner who permits smoking in residential units would be indirectly discriminating against neighbouring residents with asthma, pregnant women, children or the elderly has not been tested.

While a building owner can ban smoking through the terms by which tenants or guest rent or use a premises, a body corporate cannot ban smoking through by-laws.
Litigation

The Full Federal Court held in 1993 that there was overwhelming scientific evidence that second-hand smoke (passive smoking) causes disease in non-smokers. There has been successful litigation of second-hand smoke exposure in public places, institutions, and workplaces. These cases have been based on common law negligence, work health and safety, occupier’s liability and contract. However, there are no known Australian cases where a residential building owner who permitted smoking was liable for injury caused due to the spread of second-hand smoke to a non-smoker’s unit. Air quality cases in residential buildings involve considerable legal and technical challenges.

How to quit

Call Quitline 13 QUIT (13 7848) for free information, practical assistance and support.

Discuss quitting smoking with a health professional and plan your quitting strategy together.

Consider using pharmacotherapy such as Nicotine Replacement Therapy (NRT), Bupropion Hcl or Varenicline.