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Renters score secondhand smoke victory. Now what?

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Recently we pointed to a **new Upper East Side rental building** that has taken the bold step of going totally smoke free. Given last week's ruling by a Federal District Court judge in Nassau County, **reported yesterday by Crain's New York Business**, we wonder whether more smoke-free rentals will be cropping up in the near future.

The federal district court ruled that an Upper East Side renter was justified in breaking her lease four months early after the landlord failed to address her repeated complaints over secondhand smoke coming from a neighboring apartment. (Before breaking her lease, she refused to pay rent for two months, and the court found she owed part of that amount.) In explaining why the tenant didn't owe her ex-landlord most of the \$12,000 in unpaid rent, the court said:

"When a tenant's smoking results in an intrusion of second-hand smoke into another tenant's apartment, and that tenant complains repeatedly, the landlord runs a financial risk if it fails to take appropriate action. This case involves such a situation... The landlord's failure to take appropriate action, over a period of several months, to rectify a second-hand smoke nuisance, justifies rent abatement, and excuses the tenant from any obligation to pay rent after her constructive eviction."

Landlords around the city must be wishing that the Upper East Lease Associates (the landlord in this case) had remained mum, as this ruling was the first of its kind. Smoke-bothered renters now have some legal precedent to pressure their landlords, and one lawyer tells Crain's that in view of this decision, landlords should start screening for smokers and modifying lease terms.

"This is not the first case in which secondhand smoke has been deemed a violation of the Warranty of Habitability," real estate lawyer Steven Wagner (of **How to Break a Lease** renown) tells BrickUnderground. However, he says, "It is the first case I have seen where secondhand smoke has supported a claim of constructive eviction. I think it accurately follows a trend in the law to recognize secondhand smoke as a serious concern for landlords."

(Crain's New York)

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