



Order under Section 69 Residential Tenancies Act, 2006

Citation: 1500969 Ontario Inc. v Spademan, 2026 ONLTB 2011

Date: 2026-01-05

File Number: LTB-L-037664-25

In the matter of: 401, 291 BRANT AVE
BRANTFORD ON N3T5Y4

Between: 1500969 Ontario Inc. Landlord

And

Melissa Spademan Tenant
Lesle Spademan

1500969 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Melissa Spademan and Lesle Spademan (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant

This application was heard by videoconference on September 2, 2025.

The Landlord's agent, Jack Abraham, the Landlord's legal representative, Kristin Ley, the Tenant's legal representative, Kirk Alfaro, and the Tenant attended the hearing.

Determinations:

1. As explained below, I find that the Landlord has proven on a balance of probabilities that the Tenants' continued smoking in and around the rental unit, contrary to the Landlord's smoke-free policy, has substantially interfered with the reasonable enjoyment of neighbouring tenants and with the Landlord's lawful right and interest in operating a smoke-free residential complex.
2. The parties agreed that the written tenancy agreement dated August 23, 2014 governs this tenancy. The tenancy began in 2014 and, after the initial fixed term, continued on a month-to-month basis.
3. The tenancy agreement incorporates "Rules and Regulations" and includes an amendments clause at section 14(w) which provides, in substance, that the Tenants

covenant and agree to comply with each of the rules and regulations set out in the tenancy agreement and, upon notice, any additions or amendments to those rules and regulations.

4. The parties also agreed that in 2018 the Landlord implemented a smoke-free policy for the residential complex. The policy prohibits smoking anywhere within the building and within nine metres of the building, including on balconies. Written notice of the policy was provided to all tenants.
5. The parties further agreed at the hearing that Melissa Spademan smokes cigarettes on the balcony of the rental unit and that she has continued to do so notwithstanding the Landlord's smoke-free policy and repeated reminders. The Tenants' position is that the Landlord is not legally entitled to change the terms of the tenancy agreement by adopting a smoke-free policy after they moved in, and that they are therefore not obliged to comply with it.

N5 Notice of Termination

6. On April 22, 2025, the Landlord gave the Tenants an N5 notice of termination for substantial interference (the "N5 notice"), with a termination date of May 12, 2025. The Tenants do not dispute that they received the notice or that it was served in accordance with the Act.
7. The N5 notice describes a pattern of smoking on or about the Tenants' balcony and unit that has continued despite the Landlord's smoke-free policy and prior warnings. It refers to earlier written complaints from 2019 and 2020, the 2022 inspection where Ms. Spademan admitted to smoking on the balcony and refused to stop, and further email complaints between April 18 and May 1, 2025 from neighbouring tenants who reported cigarette smoke coming from the Tenants' balcony into their units late at night, waking them up, making them cough and preventing them from using their own balconies.
8. At the hearing, the Tenants raised a preliminary argument that the N5 notice was void for vagueness, relying on *Ball v Metro Capital Management Inc. [2002] OJ No 5931 (Div Crt)*. In *Ball*, the Court held that a notice of termination must contain sufficient particulars of the alleged conduct, including dates and a description of the events, such that a reasonable tenant would be able to understand the case to meet. Here, however, the Tenants' representative ultimately confirmed that they were **not** disputing the validity of the notice itself or the voiding period, only the Landlord's ability to enforce the smoke-free policy.
9. In any event, I find that the N5 notice contains sufficient detail to comply with *Ball*. It identifies complainant neighbours by unit, describes the nature of the complaints (smoke infiltrating neighbouring units and balconies), and gives dates and a pattern of incidents. The Tenants clearly understood that the notice related to their ongoing smoking on the balcony contrary to the smoke-free policy.
10. The Tenants do not claim that they stopped smoking on the balcony during the seven-day correction period or at any time thereafter. To the contrary, Ms. Melissa Spademan testified that she continues to smoke on the balcony, principally because she feels she cannot leave her autistic children unsupervised while she goes off-site to smoke. I therefore find that the Tenants did not stop the impugned conduct within seven days of receiving the N5 notice. The notice was not voided under section 64(3) of the Act.

11. The Tenants also argued that because an earlier N5 notice for similar reasons was withdrawn by the Landlord, it is frivolous to now proceed on the current notice. I do not accept this argument. The earlier notice was never adjudicated by the Board and there is no legal bar preventing the Landlord from issuing a new notice if the conduct continues or recurs. The evidence here establishes ongoing smoking and ongoing interference with other tenants' enjoyment despite repeated warnings over several years.
12. The tenancy agreement includes an "Amendments" clause (paragraph 14(w)) which provides that the Tenants agree to comply with the rules and regulations in the tenancy agreement and, upon notice, any additions or amendments to those rules and regulations.
13. The Landlord's 2018 and 2023 written communications advised all residents that the building was becoming smoke-free, prohibited smoking anywhere within the building (including balconies), and reminded residents of the health risks of second-hand smoke.
14. The 2022 reminder letter to the Tenants specifically referenced paragraph 14(w) of their lease, noted that their lease began after the smoke-free policy was introduced, recorded their admission that they smoke in the unit and on the balcony, and warned that continued violations could lead to termination of the tenancy.
15. In *Phillips v. 780 Wonderland Holdings Limited*, 2025 ONLTB 18969, I considered a similar argument in relation to the same standard-form amendment clause and a later-implemented smoke-free policy. I concluded that, where a tenancy agreement contains a clause requiring the tenant to comply with rules and any additions or amendments to those rules, and where the landlord adopts a smoke-free policy on reasonable notice, the landlord is entitled to enforce that policy and doing so does not amount to harassment or substantial interference with the tenant's enjoyment.
16. The facts in the present case are analogous. The Tenants entered into a tenancy agreement that includes an amendment clause; the Landlord subsequently adopted a smoke-free policy for the entire complex; proper written notice was given; and there is a clear record of complaints from neighbours about ongoing second-hand smoke emanating from the Tenants' balcony.
17. The Landlord also relied on *Wellington Condominium Corp. No. 31 v. Silberberg*, where the Superior Court upheld a non-smoking rule adopted for health-related and property-related reasons, emphasising that such rules can be reasonable even if they restrict smoking inside private residences.
18. In *Stanbar Properties Ltd. v. Rooke* [2005] O.J. No. 6363 (Ont. Cup.Ct., Div.), the Divisional Court held that where a tenant has voluntarily agreed to a tenancy agreement that includes certain contractual obligations, the tenant's deliberate refusal to comply with those terms can constitute substantial interference with the landlord's lawful rights under what is now section 64(1) of the Act. The Tribunal has jurisdiction to enforce such terms and a tenant cannot simply refuse to comply "as a matter of principle."
19. I therefore find that the Landlord was entitled, under section 14(w) of the tenancy agreement, to implement the smoke-free policy, and that the policy has become a lawful term of the Tenants' tenancy. The Tenants' refusal to comply with that policy is not justified by the fact that the policy post-dates their original lease.

Substantial Interference

20. The documentary evidence includes multiple written complaints from neighbouring tenants dating back to 2019 describing strong tobacco and marijuana odours entering their units from the Tenants' unit and balcony, disrupting their sleep, causing physical symptoms such as headaches and upset stomach, and reducing their enjoyment of their homes.
21. The Tenants did not dispute that they smoke on the balcony and occasionally in the unit. They maintained that they only smoke outside and that there are other smokers in the building.
22. In *Hassan v Niagara Housing Authority*, the Divisional Court emphasised that a landlord has a positive obligation to take reasonable steps to address conduct by one tenant that substantially interferes with another tenant's reasonable enjoyment, and that merely sending letters or holding meetings is not enough if the interference continues.
23. In *Morguard Residential v Peters*, the Divisional Court confirmed that serious odours and conditions emanating from a unit, which require the relocation of another tenant and interfere with a landlord's ability to meet its maintenance obligations, can amount to substantial interference with both other tenants' reasonable enjoyment and the landlord's lawful interests.
24. I accept the evidence of the complainant tenant and the Landlord's staff that second-hand smoke from the Tenants' unit and balcony has repeatedly infiltrated other units and the hallway, causing physical discomfort and distress over a period of several years.
25. I find that the ongoing smoking in the unit and on the balcony, in contravention of the smoke-free policy, has substantially interfered with both:
 - the reasonable enjoyment of other tenants; and
 - the Landlord's lawful interest in operating a smoke-free residential complex and in protecting itself from health-related and legal risks associated with second-hand smoke exposure.
26. As in *Phillips*, where the Board held that a tenant's principled refusal to comply with lawful amendments to their tenancy can amount to substantial interference with the landlord's lawful rights, I find that the Tenants' continued intention to smoke on the balcony despite clear notice and repeated warnings further supports a finding of substantial interference under subsection 64(1) of the Act.
27. The Landlord has therefore proven on a balance of probabilities that the grounds set out in the N5 notice are made out and that the Tenants did not void the notice under subsection 64(3) of the Act.
28. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Relief from Eviction

29. Section 83 of the Act requires the Board to consider all the circumstances of the parties in deciding whether it would be unfair to refuse or to grant an eviction, and it authorizes the Board to grant relief from eviction on terms.
30. The evidence discloses that the Tenants have lived in the unit for a number of years, that Ms. Spademan is a long-term smoker, that two of the household members are autistic children, and that an elderly parent also resides in the unit. The Tenants expressed genuine fear about their ability to secure alternative housing and to manage their responsibilities if evicted.
31. On the other hand, the complaints regarding second-hand smoke are serious, longstanding and well-documented. Neighbouring tenants describe significant impacts on their health and enjoyment of their homes, and the Landlord has attempted progressive steps short of eviction, including notices, building-wide reminders and verbal warnings.
32. In all of the circumstances, I find that an immediate eviction would be unduly harsh, but that it would also be unfair to the complaining tenants and to the Landlord to allow the tenancy to continue without enforceable conditions.
33. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. Effective January 6, 2026, and continuing for the duration of the tenancy, the Tenant, any other occupants of the rental unit, and any persons they permit in the residential complex shall not smoke or vape any substance anywhere inside the rental unit, on the balcony of the rental unit, or within any location that is less than nine (9) metres from the building, in accordance with the Landlord's smoke-free policy.
3. If the Tenant fails to comply with the conditions set out in paragraph 2 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
5. The total amount the Tenant must pay the Landlord is \$186.00.
6. If the Tenant does not pay the Landlord the full amount owing on or before January 31, 2026, the Tenant will start to owe interest. This will be simple interest calculated from February 1, 2026 at 4.00% annually on the balance outstanding.

January 5, 2026
Date Issued

Colin Elsby
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.