



Order under Section 69 Residential Tenancies Act, 2006

Citation: Malsabic v McGuigan, 2025 ONLTB 95224

Date: 2026-01-12

File Number: LTB-L-026341-25

In the matter of: 7A, 7 MUSGRAVE ST
TORONTO ON M4E2H3

Between: Dragan Malsabic Landlords
Unous Dawud

And

Kyle Scott McGuigan Tenant

Dragan Malsabic and Unous Dawud (the 'Landlords') applied for an order to terminate the tenancy and evict Kyle Scott McGuigan (the 'Tenant') because:

- the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex involving the production of an illegal drug, the trafficking in an illegal drug or the possession of an illegal drug for the purposes of trafficking;
- the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex.

The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on December 8, 2025.

The Landlord Unous Dawud and the Tenant attended the hearing.

Determinations:

Preliminary Issues

Tenant Adjournment Request

1. At the outset of the hearing, the Tenant stated he was still waiting for body camera footage from the police that he had requested in June 19, 2025. This matter was before the Board on August 11, 2025 and adjourned for this reason. The matter was marked peremptory on the Tenant to proceed. While the Tenant did not specifically request an adjournment, I took his submissions to essentially be a request for one.
2. I asked the Tenant why, if the evidence had not yet been received, did not summons the officers involved to attend the hearing to provide testimony. He provided no reasonable explanation for not doing so. I did not adjourn the file, finding the Board hearing cannot be held in abeyance for evidence the Tenant has been trying to obtain for almost six months. In addition, the Tenant could have summonsed the officers that had relevant evidence to provide at the time the body camera footage is said to have been taken, particularly since it would have been apparent to the Tenant this evidence would not be in his possession for a hearing peremptory on him after already having been granted an adjournment for this reason.

Status of the Parties and Does the Act Apply?

3. The N6 notice of termination this application is based upon identifies Unous Dawad and Dragan Malsabic as the Landlords. At the hearing, Mr. Dawad stated he is the business owner at the address of the rental unit and that he is not the direct Landlord because he does not own the property. He stated he is the Landlord's Agent.
4. Mr. Dawad explained that he has a commercial lease with the owner of the property Mr. Malsabic and he rents the unit to operate the business he owns. His business involves auto detailing and a body shop. Mr. Dawad's position was the Act does not apply to this tenancy.
5. Mr. Dawad testified that approximately two years ago, in order to boost revenue for his business, he rented office/storage space to the Tenant. This part of the premises is located in the rear upper area of the property. Mr. Dawad described it as a large office that he himself once used as his own office. The rental unit is located within the confines of his operating business space and is accessed at the rear of his shop. There is a separate entrance at the rear of the building the Tenant uses and Mr. Dawad explained this is the emergency exit. His intention was to rent the Tenant office and or storage space but the arrangement has led to the Tenant using the space for residential purposes.
6. The parties agreed there is no written lease agreement. It was not disputed that Mr. Dawad has control over the entire premises where his business is located because of his commercial lease with Mr. Malsabic. The Tenant and Mr. Dawad negotiated the terms of the tenancy including the designated space and the amount of the monthly rent. There was no evidence provided by either Mr. Dawad or the Tenant that Mr. Malsabic had any involvement in the negotiation of the occupancy agreement. Mr. Dawad gave no testimony that his lease with Mr. Malsabic prohibited him to enter into the agreement with the Tenant.
7. Mr. Dawad stated he believed that the Tenant would use the space for work since he was employed in the business of training automotive salespeople. The Tenant travelled for work and to him it made sense since he rarely saw the Tenant at the property and estimated that at first he only stayed at the unit once every three weeks. Mr. Dawad stated

he agreed that the Tenant could stay in the unit once in awhile but that the frequency of the Tenant staying in the unit increased in frequency from once every three weeks to once a week, then to weekends before it became constant. His testimony was he was aware of the consequences of someone living in the commercial space because of similar circumstances that had occurred nearby the property. As a result, he told the Tenant he would have to leave and their relationship deteriorated from that point onward.

8. Mr. Dawad initially said that when he first discussed the space with the Tenant, the Tenant sought permission to stay in the unit. In an attempt to clarify, I asked Mr. Dawad whether this was agreed to during the discussion of terms and he agreed it was. However, Mr. Dawad later stated the request to stay in the unit occasionally only came after the agreement had been negotiated, but that it was early on in the tenancy. This seemed to be an attempt on Mr. Dawad's part to alter his evidence to exclude permission to stay in the unit from the negotiation of the occupancy agreement.
9. Mr. Dawad explained that he is operating an automotive business and had no interest in someone living in the office space rented to the Tenant. His evidence was there are gas and fumes throughout the premises and it is not safe for residential occupation given these risks. He cannot access the unit because the doors are locked by the Tenant. He described the Tenant as someone that had locked himself in one of the offices within his business. Mr. Dawad testified he has tried to have the police remove the Tenant but the police have refused to do so, telling him it is a matter for the Landlord and Tenant Board.
10. I asked Mr. Dawad how the Tenant accesses the premises from the emergency exit. He initially replied that he did not know and that he himself has never used this door. He also stated that people are often present to permit the Tenant access or that the Tenant props the door open. I asked Mr. Dawad how the Tenant would enter at midnight and if there were people typically present at that time. He responded that the Tenant must have a key. I asked Mr. Dawad how the Tenant would have obtained this key and Mr. Dawad then acknowledged it was provided to the Tenant at the beginning of the agreement. I found Mr. Dawad was not being forthcoming on a simple issue concerning the Tenant's access to the unit; that being: he was given keys to the door at the back of the property.
11. After the Tenant explained the unit has its own kitchen and bathroom, Mr. Dawad acknowledged that it did and that these facilities had been installed years earlier by the owner. I found this missing information during Mr. Dawad's initial description of the unit as office or storage space to be an attempt to obscure the character of the area the Tenant had rented from him.
12. I asked Mr. Dawad if he had submitted any photos of the Tenant's unit and he confirmed, after looking through his evidence, that he had not.
13. The Tenant testified that he rented the unit from Mr. Dawad in February 2023 after finding the unit on Kijiji. He stated the unit was advertised as a studio bachelor apartment and that he viewed the space with Mr. Dawad. He paid Mr. Dawad first and last month's rent as well as a security deposit and received the keys to the unit the following day. Mr. Dawad disagreed, stating the Kijiji ad was for a rear back office or storage space. Neither party submitted a copy of the Kijiji ad at the hearing.

14. The Tenant's testimony was the unit is his home and that he moved his furniture from his previous residence into the unit. He stated it is his apartment and that Mr. Dawad was aware he was living there, having been in the unit before their relationship deteriorated.
15. The Tenant testified that he worked for Chrysler at the time and travelled frequently across Canada. He told Mr. Dawad about his employment and that he was frequently travelling. He also explained Mr. Dawad knew about his employment in the automotive industry because it was apparent from the proof of income provided to Mr. Dawad at the time they entered into their agreement.
16. The Tenant explained that he had no need for an office at all, explaining space was provided to him by Chrysler at the locations they sent him to. The Tenant stated the unit was rented as a 100% residential home and his periodic presence was because of his work schedule. The Tenant agreed the doors to the unit are locked and that staff of Mr. Dawad's business do not have access to the area. He explained it's his home and that as such, he locks the doors.

Analysis: Status of the Parties and Does the Act Apply?

17. It was clear from the evidence that Mr. Dawad was seeking a determination that the *Residential Tenancies Act, 2006* (the Act) does not apply to this tenancy. The party seeking such a finding has the burden of establishing on a balance of probabilities that the Act does not apply.
18. At the hearing, after hearing the evidence of the Tenant and Mr. Dawad, I reserved my decision on the issue to consider it and to hear the merits of the application in the event the hearing provided additional evidence that was relevant to my determination.
19. Pursuant to the definition of tenancy agreement in section 2(1) of the Act, a tenancy agreement means a written, oral or implied agreement between a tenant and a landlord for occupancy of a rental unit and includes a licence to occupy a rental. There is no dispute here the agreement between the parties was oral.
20. A tenant is defined in section 2(1) of the Act as:

"tenant" includes a person who pays rent in return for the right to occupy a rental unit and includes the tenant's heirs, assigns and personal representatives, but "tenant" does not include a person who has the right to occupy a rental unit by virtue of being,

(a) a co-owner of the residential complex in which the rental unit is located, or

(b) a shareholder of a corporation that owns the residential complex

21. Landlord is also defined in section 2(1) this way:

"landlord" includes,

(a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,

(b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and

(c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent;

22. Based on the evidence presented, it is clear to me the Tenant meets the definition of tenant under the Act. It was not disputed he pays rent to Mr. Dawad for the right to occupy the rental unit. Whether or not there are currently arrears of rent does not change the fact the Tenant meets this definition.
23. Based on Mr. Dawad's testimony, I am satisfied Dragan Malsabic meets the definition of landlord under section 2(1) of the Act. The definition includes the owner of the rental unit and I accept Mr. Dawad's testimony that Mr. Malsabic does own the property. Mr. Malsabic is named as a Landlord on the N6 notice and the application.
24. As stated, there was no evidence Mr. Malsabic's commercial agreement with Mr. Dawad prohibited Mr. Dawad from entering into the agreement with the Tenant. Mr. Malsabic did not attend the hearing to testify and there was no evidence he was unaware that Mr. Dawad had entered into the tenancy agreement with the Tenant.
25. When I consider the evidence, I also find Mr. Dawad meets the definition of landlord. He is legally entitled to the premises based on a commercial lease with Mr. Malsabic. He is the one that negotiated and permitted occupancy of the rental unit to the Tenant. While he occupies the premises, he does so for business purposes, not residential reasons. He does not live in the premises or the rental unit. Mr. Dawad is entitled to possession of the premises due to his commercial lease with Mr. Malsabic and both he and Mr. Malsabic have attempted to enforce the rights of a landlord by serving the N6 notice of termination and filing this eviction application with the Board.
26. In *Tremblay v. Ogunfeibo*, 2019 ONSC 7423, a decision that I am bound by, the Divisional Court addressed a somewhat similar set of facts. Ms. Tremblay rented a unit from the owner, but did not live in the unit herself. With the knowledge of the owner, she rented the unit to Mr. Ogunfeibo. The Court found at paragraphs 36 and 37:

The relationship between Ms. T and Mr. O falls squarely within the words of the statute. She is a landlord because she is a "person who permits occupancy of a rental unit". She is not permitting Mr. O to occupy her unit with her, so the exemption in the definition of "landlord" in paragraph (a) of the definition does not apply.

Similarly, Mr. O is “a person who pays rent in return for the right to occupy a rental unit.” He pays that rent directly to Ms. Tremblay and he gave evidence that he believed she was the landlord. So, he fits the definition of “tenant”.

27. Apart from the commercial relationship between Mr. Dawad and Mr. Malsabic, I find the circumstances similar to those in *Ogunfeibo*. Mr. Dawad and Mr. Malsabic are Landlords to the Tenant who was granted occupancy of the rental unit in exchange for rent. Again, no evidence was provided by Mr. Dawad that he did not have authority to rent the unit to the Tenant or that Mr. Malsabic was unaware that he had done so.
28. Further, in [*Slapsys \(1406393 Ontario Inc.\) v. Abrams*](#), 2010 ONCA 676, para 7, the Court of Appeal found that definition of “landlord” is not restricted to the owner of a rental unit and there may be more than one “landlord”. The Court stated that whether a person who is not the owner of the rental unit is “a person who permits occupancy of a rental unit” will depend upon the facts, including whether the person has the ultimate authority to permit occupancy. In this case, Mr. Dawad has possession of the entire premises due to his commercial lease and in the absence of evidence from Mr. Dawad or Mr. Malsabic showing otherwise, I find Mr. Dawad had authority to permit occupancy to the Tenant.
29. Therefore, the fact that Mr. Dawad and Mr. Malsabic do not perform the same tasks in the tenancy does not prevent them from both being landlord. It is not uncommon for the property owner and a property manager to play separate roles in managing a rental unit or residential complex. Here, Mr. Dawad deals with the Tenant on a usual basis and he is paid the rent. I can infer Mr. Malsabic, as owner of the building, is responsible for issues at the property such as building maintenance and other like things.
30. Previous Board orders have addressed similar types of arrangements and found that there can be two landlords. In *TSL-50630-14-RV2 (Re)*, [2015 CanLII 13940](#) (ON LTB), HPA, a social services agency, entered into tenancy agreements with various private landlords, including HCH. HPA brought an eviction application against HCH pursuant to section 69 of the Act alleging the tenant HCH or another occupant had substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the landlord.
31. A three-member Panel of the Board, after a review hearing, found:

Given the broad definition of “landlord” contained in section 2(1) of the RTA, both parties can be considered to be the landlord. Here, IM pays his rent directly to HCH, and interacts with HCH in regard to all, or nearly all, aspects of his tenancy. HPA continues to have various rights and responsibilities in relation to IM’s tenancy. For example, it continues to have responsibility for maintenance of the rental unit and the residential complex in which the unit is located and it, not HCH, has rights such as to seek above guideline rent increases under the RTA. [para. 25]

We find there is a single residential tenancy in respect of the rental unit occupied by IM. IM is the sole Tenant, and HPA and HCH are Co-Landlords [para 39].
32. This case is similar to the circumstances before me. In the present case, Mr. Malsabic, the owner of the property, has rented the premises to Mr. Dawad. Mr. Dawad, as the person

with lawful possession of the property, negotiated and permitted the Tenant to occupy the rental unit that is within the premises in exchange for rent.

33. The rental unit is private and has locking doors and a kitchen and bathroom. I am satisfied it is living accommodation used or intended for use as rented residential premises by the Tenant. He has his furniture there including a bed. He lives in the unit. I do not find Mr. Dawood's description of the unit as office or storage space accurately describes the unit and in the absence of any photographic evidence showing differently, I am not convinced Mr. Dawood has proven on a balance of probabilities the unit is not living accommodation.
34. In addition, Mr. Dawood provided no supporting evidence showing the Tenant's use of the unit is predominantly for business use or any business use at all. In the absence of such evidence and when I consider the Tenant's testimony, combined with Mr. Dawad's acknowledgment that residential use was discussed at the inception of the tenancy, I find it is most likely the Tenant never intended to use the unit for business purposes and always intended it to be his residence. I found the Tenant credible and his testimony was given in a straightforward manner. It was not impacted by vague or evasive responses like Mr. Dawood's testimony was. For all of these reasons, I prefer the Tenant's testimony and I am convinced the unit is a rental unit as defined in the Act and that it is used entirely for residential purposes and therefore not exempt under section 5(j) of the Act.
35. Based on all of the evidence I have to consider, I find Mr. Malsabic and Mr. Dawad are both Landlords to the Tenant. I note this is precisely what the N6 notice of termination served by the Landlords stipulates. I also find the Act does apply to this tenancy, satisfied on a balance of probabilities the rental unit has been used only for residential purposes since the tenancy began.

L2 Application-N6 Notice

36. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy in the L2 application. Therefore, the application is dismissed.
37. The Tenant was in possession of the rental unit on the date the application was filed.
38. On April 6, 2025, the Landlord gave the Tenant an N6 notice of termination by placing the document under the door of the rental unit. The notice was therefore deemed served on April 6, 2025 and the termination date in the notice is April 27, 2025.
39. The notice of termination contains the following allegations:
 - a) On July 27, 2024, the Landlord's personal vehicle was stolen from the property and returned a couple of hours later. It seemed like a joyride situation or that it was returned due to a reward that was promised to the Tenant. His friends that stay with him were seen around the area shortly before the incident. Police were involved and other property has been damaged or stolen.
 - b) Multiple Instances between August 2024 and March 2025. This is a running mechanic/autobody shop. There are customer vehicles and staff property that is left on site during and after business hours. There have been multiple instances of

people being uncomfortable with 3-5 strangers loitering at all times. They once broke into the shop.

- c) On March 28, 2025, the Landlord suspected the Tenant and persons associated with him were engaging in the procuring and trafficking of drugs. When police were inside the unit as a result of them breaking into the shop, evidence of this found.
- 40. At the hearing, I pointed out to the Landlord that allegation (b), as set out above, does not specify the date any illegal act is said to have occurred. The Landlord particularized a seven-month window. This requires the Tenant to review his conduct for each minute of each day of the tenancy during these seven months in order to respond to the claims made.
- 41. In *Ball v Metro Capital Management Inc.* [2002] OJ No 5931 (Div Crt)] the Divisional Court considered subsection 43(2) of the Act and found that the purposes of requiring that a landlord provide reasons and details on a notice given pursuant to the Act was to: (a) allow the tenant to be in a position to know the case to be met before the Board; (b) allow the tenant to decide whether or not to dispute the allegations made by the landlord; and, in the case of a voidable notice, (c) allow the tenant to stop the conduct or activity or correct the omission. The Divisional Court found that, to be in compliance with subsection 43(2), a notice should include dates and times of the alleged conduct, together with a detailed description of the alleged conduct. [Ball v Metro Capital Management Inc. [2002] OJ No 5931 (Div Crt), paras 10 and 12.] In *Ball*, a notice that did not meet these requirements was found void.
- 42. I did not find the allegation set out in paragraph 39(b) above provided the specific dates and details the N6 notice clearly instructs the Landlords to include and section 43(2) of the Act and *Ball* require such that the Tenant could know the case to be met. For these reasons, I did not consider this claim.

Stolen Car

- 43. Mr. Dawad testified that he believes the Tenant was involved in his vehicle being stolen from the property. His evidence was everyone knew the Tenant was involved. Mr. Dawad's testimony was the Tenant did not directly steal his vehicle but was part of the ring of people that had it stolen. He based his suspicion on telling the Tenant about a reward for the return of his vehicle and the vehicle was promptly returned. Mr. Dawad stated he could not prove the Tenant was involved but was relying on his intuition.
- 44. For his part, the Tenant agreed he knew Mr. Dawad's car was stolen and he helped him look for it. He stated he put an Air Tag on a bicycle located in a nearby bush and the vehicle was returned hours later. His evidence was that his only involvement was helping Mr. Dawad get his vehicle back.
- 45. Based on the evidence, I find the Landlord, Mr. Dawad, has not proven on a balance of probabilities that the Tenant was involved in the theft of his vehicle. His own evidence was he could not prove it and I agree he has not done so. Suspicion and speculation is not evidence and for these reasons, this ground for eviction is denied.

Illegal Drugs

46. Mr. Dawad testified the Tenant is using the rental unit as a drug den and that it is obvious what is taking place. He stated the Tenant and guests of the Tenant are doing drugs all day in the unit and this can be smelled in his business area of the property.
47. Mr. Dawad's testimony was that he has seen drugs in the unit and has taken photos showing drug activity is taking place in the unit. The Landlord filed photographs with the Board in advance of the hearing but did not serve any of his evidence to the Tenant as required by Rule 19.1 of the Board's Rules.
48. Mr. Dawad confirmed he received the Notice of Hearing that includes clear instructions requiring him to serve his evidence to the Tenant no less than seven days before the hearing. Mr. Dawad stated that despite these clear instructions he thought the Tenant would see his evidence in the TOP portal and that he had not been in communication with Tenant for some time. I did not find Mr. Dawad's explanation for failing to disclose to the Tenant the evidence he intended to rely on at the hearing to be satisfactory. I also did not find it would be procedurally fair to the Tenant to permit Mr. Dawad to essentially ambush the Tenant with evidence during the hearing, leaving the Tenant with no opportunity to meaningfully respond to it. I did not permit Mr. Dawad to rely on evidence not disclosed to the Tenant as required by the Board's rules. Mr. Dawad did not request an adjournment and the hearing continued.
49. Mr. Dawad testified that the presence of drugs and drug paraphernalia was seen not only by himself but also by the police, by law enforcement and the fire department. He stated the substance he observed was clearly drugs but he could not identify the type of drug, only able to describe it as something hard and white. He stated these observations were made once between March 2025 and April 2025, but he did not know the exact date.
50. Mr. Dawad also testified that the police attended the rental unit on March 30, 2025 before correcting himself during cross examination, saying he was mistaken and that this had actually occurred on March 30, 2024.
51. Mr. Dawad's testimony was multiple people were going in and out of the unit over the course of a day. Mr. Dawad was asked about the dates people were coming and going from the unit and Mr. Dawad responded that the dates of his photographs that were not permitted into evidence show date stamps between November 29, 2024 and December 13, 2024.
52. None of the dates provided by Mr. Dawad with respect to the alleged drug activity, the police presence or the presence of random people at the unit took place on March 28, 2025, the date alleged on the N6 notice of termination. No evidence was provided showing the Tenant, despite a police presence in the unit, was charged with any offence, let alone offences related to drug activity. Mr. Dawad had no witnesses from the police, fire department or the local bylaw department attend the hearing to testify as to when any activity was observed at the unit or what was observed. His explanation for this was that he did not know this was required and that he believed he had sufficient evidence.

53. The Tenant denied Mr. Dawad's allegations concerning drug activity in the unit. He stated the claims are nothing more than an ongoing campaign by the Landlords to remove him from the rental unit.
54. This is the Landlords' application and it therefore their burden to prove the allegations being considered in the N6 notice of termination. The Landlords cannot secure an order terminating the tenancy based on issues and incidents that took place at various times over the course of the tenancy and are not claimed on the N6 notice. Here, no evidence was provided of anything that occurred on March 28, 2025. Mr. Dawad stated he made his observations sometime between March 2025 and April 2025 but did not know when. In addition, after clarifying his own testimony, his evidence was that the police incident he testified about took place on March 30, 2024, almost one year before the March 28, 2025 incident alleged on the N6 notice.
55. The Landlords are the ones that chose to allege that on March 28, 2025, the Tenant and those associated with him were found to be taking part in an illegal act involving the procuring and trafficking of illegal drugs. They provided no evidence at all that this was found on March 28, 2025 by the police or anyone else.
56. Mr. Dawad was free to accurately record when his observations took place and testify to this. Instead, he attended the hearing, only able to provide an estimate that he was in the unit sometime between March 2025 and April 2025. The Landlords were also free to have police witnesses attend the hearing to substantiate the Landlords' suspicion that drugs were present in the unit, when they were present, and what the likely purpose of their presence was. Without more, I find the Landlords have fallen very short of proving that on March 28, 2025, the Tenant or an occupant of the rental unit committed an illegal act by engaging in the production, trafficking or possession of an illegal drug for the purposes of trafficking it. Accordingly, this ground for termination must also be denied.
57. Since I have not found the Landlords have established the grounds for termination of the tenancy, the application must be dismissed.

It is ordered that:

1. The Landlords' application is dismissed.

January 12, 2026
Date Issued

John Cashmore
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

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