



Order under Section 69 Residential Tenancies Act, 2006

Citation: 547622 Ontario Limited c/o Bentall Property Services (Ontario) Ltd. v Pearce, 2026
ONLTB 2109

Date: 2026-01-06

File Number: LTB-L-071353-25

In the matter of: 109, 1770 EGLINTON AVE E
Toronto ON M4A2T1

Between: 547622 Ontario Limited c/o Bentall Property Services (Ontario) Ltd. Landlord

And

George Pearce Tenant
Dyanna Jessie McIlwain

When the capitalized word “Landlord” is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word “Tenant” is used in this order, it refers to all persons identified as a Tenant at the top of the order.

547622 Ontario Limited c/o Bentall Property Services (Ontario) Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict George Pearce and Dyanna Jessie McIlwain (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;
- 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 Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex.

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

This application was heard by videoconference on December 15, 2025.

Only the Landlord's legal representative Martin Zarnett, a student at law Pavel Shetra, the Landlord's agent Jody Baker and the Landlord's witness Charisse Riccio attended the hearing.

As of 11:45 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. However, given the remedial intent of the Act, the tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On April 21, 2025, the Landlord gave the Tenant a first, voidable N5 notice of termination deemed served on April 26, 2025. The notice outlined that the Tenant, George Pearce was seen smoking by the front entrance of the residential complex on January 10, 2025. Was sent a warning letter dated January 13, 2025. On March 13, 2025 and March 16, 2025, and April 2, 2025 the Tenant, was again seen smoking by the front door entrance of the residential complex and littering his cigarette butts. The Tenancy Agreement contains a strict no smoking policy as outlined in Section 10, Section S and Section 41 of the Tenancy Agreement. The Landlord prohibits the smoking of any substance in the residential complex in accordance with Ontario's Smoke Free Ontario Act.
4. Therefore, the Landlord was allowed to give the Tenant a second, non-voidable N5 notice of termination under section 68 of the *Residential Tenancies Act, 2006* (Act).
5. On August 20, 2025, the Landlord gave the Tenant a second N5 notice, an N6 notice and an N7 notice of termination deemed served on August 25, 2025, all with a notice of termination date of September 20, 2025. The notices of termination allege that:
 - 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;
 - 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 Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex.
6. Specifically, the notices outline the following allegations:

“On July 24, 2025, at approximately 2:45 am, the Tenant, George Pearce, was smoking by the rear door entrance in the residential complex and littering his cigarette butts.

The actions of the Tenants, Tenants’ guests or occupants of the rental unit have substantially interfered with other Tenants’ and/or the Landlord’s reasonable enjoyment of the residential complex, and/or lawful rights, privileges, or interests.

The Tenancy Agreement contains a strict no smoking policy. Please see attached Section 10, Section S and Section 41 of the Tenancy Agreement. The Landlord prohibits the smoking of any substance in the residential complex in accordance with Ontario’s Smoke Free Ontario Act.

The actions of the Tenants, Tenants’ guests or occupants of the rental unit in smoking in the rental unit or residential complex of also violated the terms of the Tenancy Agreement and put the Landlord at legal jeopardy with respect to other Tenants in the residential complex thereby substantially interfering with the lawful right, privilege and interest of the Landlord to reduce smoking in the rental units in the residential complex and to prohibit smoking in the rental unit. (2nd N5 notice)”

7. Regarding the N6 and N7 notices, the notices outlined the same alleged dates of smoking in front of the residential complex as outlined in the first N5 notice described in paragraph #2, in addition to the date of July 24, 2025. Further, the notice alleges that the Tenant has committed an illegal act contrary to Smoke-Free Ontario Act, as the Landlord has prohibited smoking or vaping in the indoor common areas and anywhere in the residential complex or inside of rental units and that the Tenant created second-hand smoke by smoking inside the rental unit and/or residential complex contrary to the Tenancy Agreement and seriously impaired the safety of other Tenants in the residential complex.

The Landlord’s Evidence

8. The Landlord’s Property Manager Jody Baker (‘JB’) testified that there have been numerous complaints from the tenant of unit #114 in the residential complex regarding smoke smell emanating from the Tenant smoking near the door, discarding his butts in the garden or on the ground and extinguishing the cigarettes in the building wall. These complaints are outlined on pages 1-8 as contained in DOC-6788186 of the Landlord’s disclosure.
9. JB testified that residential complex is comprised of 93 rental units over 7 floors and that while some Tenants have been grandfathered in respect of exemptions regarding smoking rules based on their move in date and when policies came into effect, that the Landlord is trying to transition to a smoke free building. That the Tenant was issued a warning letter on January 13, 2025, prior to the issuance of the first N5 notice with hopes that the conduct would stop however no change has occurred in the Tenant’s smoking activities as complained of.
10. Furthermore, it was submitted that the Tenant’s actions are contrary to what was agreed to between the parties pursuant to the standard lease agreement. The agreement outlines smoking in section 10, section S and section 41. Specifically, section 41 outlines that:

11. The Landlord's witness Charisse Riccio ('CR'), the Tenant of unit #114 submitted that her bedroom window is 10 feet from the door, the location whereby the Tenant has been standing and smoking near and that smoke odours have entered her rental unit.
12. CR identified the Tenant in a photo as taken on March 13, 2025 from camera footage and submitted that the Tenant is seen smoking a cigarette about two feet from the door. That this is the Tenant's preferred smoking location as there is balcony overhead which shelters the Tenant from rain or snow.
13. CR submitted that she has filed numerous complaints to the Landlord and that others have also complained. That she doesn't like the smell of smoke, that she has at times had to walk through a cloud of smoke when using the exit or entry doors and that she has been subject to the odour as transferred onto her clothing in addition to entering through the window into her bedroom. And that since the issuances of the notices she has observed the Tenant smoking in the area beside the door on October 10 and November 5, 2025 and is concerned about the impact of second-hand smoke.

Analysis:

14. Subsection 64(1) of the Act states:

A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

15. Section 61(1) of the *Residential Tenancies Act, 2006* (the Act) states:

A landlord may give a tenant notice of termination of the tenancy if the tenant or another occupant of the rental unit commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex.

16. Section 66(1) of the Act states:

A landlord may give a tenant notice of termination of the tenancy if,

(a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and

(b) the act or omission occurs in the residential complex.

17. I accept the evidence of the Landlord and their witness that the Tenant is smoking close to the door of the residential complex contrary to the rules and terms as outlined in the rental agreement and that the smoke odour frequently emanates entering both the common areas and the other tenant's rental units. The impact of the Tenant's smoking is supported by the testimony of CR and the numerous complaints to the Landlord.
18. A tenant is entitled to quiet enjoyment of their rented premises, which includes the right not to be regularly subjected to second-hand smoke. Here, CR has raised concerns to the Landlord.
19. In the case of *Hassan v Niagara Housing Authority*, 2001 Carswell Ont 4890, the Divisional Court held that where a landlord receives a complaint about another tenant, a landlord has a positive obligation to investigate and to take reasonable steps, in a timely manner, to resolve the problem. This may include commencing an eviction proceeding against the offending tenant. Where a landlord's fails to take adequate steps against the offending tenant this may create exposure to applications filed by the affected tenants.
20. In *Furr v. Courtland Mews Cooperative Housing Inc.*, the Divisional Court confirmed that serious impairment of safety includes both actual impairment and a real risk of impairment. Although the Landlord's application is not about actual physical harm, I find that there is a cumulative risk of impairment as present from ongoing exposure to second hand smoke and that in this case this risk is present.
21. Lastly, and as referenced by the Landlord, the case of *North Avenue Road Corporation v. Tom Travares*, [2015 ONSC 6986](#) (Div. Ct.), the Divisional Court dealt with a similar case regarding smoking. In this case, the Court found that the implications of smoking within an apartment building where other tenants are impacted is a matter of public interest. The Court found the landlord has a lawful interest in protecting itself against future claims by tenants and future tenants based on a failure to comply with the Act. The Court found that "*the landlord has an obligation to take reasonable actions against a tenant that denies a neighbouring tenant enjoyment of the premises. I am of the view, knowledge of the existing smoking problem simply sets the landlord at legal risk of having an application brought for failing to comply with section 20 of the Act.*"
22. On the basis of the uncontested evidence before me, I am satisfied on a balance of probabilities that the Tenant's smoking has substantially interfered with the reasonable enjoyment of other tenants in the building and lawful right, privilege or interest of the Landlord, that the Tenant has committed an illegal act and that the Tenant has seriously impaired the safety of any person and that the act occurred in the residential complex. The actions of the Tenant have put the landlord at legal risk from other tenants in the

complex and the exposure to second hand smoke has substantially interferes with other tenants and have has seriously impaired their safety.

23. The Landlord seeks a termination of tenancy submitting that the circumstances as outlined do not warrant a consideration of a conditional order as the Tenant has repeatedly violated the terms of the lease agreement, the Landlord's no smoking policy and the provincial Smoke Free Ontario Act.

Relief from eviction

24. 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.

25. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

26. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. For the duration of the tenancy the Tenant shall:
 - a) Not smoke within 9 meters of any entry or exit door.
 - b) Dispose of cigarette butts in the disposal receptacle(s) as provided on the grounds of the residential complex.
 - c) Smoke in the designated outdoor area(s) if allocated for this purpose.
 - d) Adhere to all smoking rules and policies of the Landlord.
3. If the Tenant fails to comply with any of 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. 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 6, 2026
Date Issued

Alicia Johnson
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.