



Order under Section 69 / 88.1 Residential Tenancies Act, 2006

Citation: 1322085 Ontario Limited v Carlton, 2026 ONLTB 2881

Date: 2026-01-09

File Number: LTB-L-078660-25

In the matter of: 3, 2 - 8 Twenty First St
Toronto ON M8V3L7

Between: 1322085 Ontario Limited Landlord

And

Andrew Carlton Tenant

1322085 Ontario Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Andrew Carlton (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.

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

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

The Landlord's agent, Mariana Kerekes (MK), the Landlord's Legal Representative, Howard C. Cohen, and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the application is dismissed.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N6 Notice of Termination

Illegal Act

3. On August 14, 2025, the Landlord served an N6 notice of termination alleging that the Tenant committed an illegal act in the rental unit or residential complex by break and enter of MK's room and theft of MK's property on several occasions.
4. MK, the owner of the property, testified that the building is a triplex. The Tenant occupies the top floor unit. MK resides on the main floor. There are two additional rental spaces in the basement, one a one-bedroom unit and the other a small room with a bathroom. MK stated that the units are self contained and that the only shared interior areas are the common hallways and stairs.

September 2024: Missing Wallet

5. With respect to the September 2024 wallet allegation, MK testified that on an unknown day in that month she discovered her wallet was missing from inside her unit. She could not recall the specific date and did not file a police report. She believes the Tenant entered her room and took the wallet, but she provided no particulars of date or time.
6. Section 43 of the *Residential Tenancies Act, 2006* (the 'Act') requires that a notice of termination set out the reasons and details for the termination. In *Ball v. Metro Capital Property*, the Divisional Court held that a notice must include sufficient particulars to allow the recipient to know the case to meet, including dates and times and a description of the alleged conduct. In the absence of a precise date for the alleged loss of the wallet, the Tenant was not fairly informed of the case against him. Consistent with *Ball*, I dismiss this allegation.

December 20, 2024: Missing Cash

7. In the notice MK alleges that \$6,000.00 Canadian dollars and \$600.00 Euros prepared for travel disappeared from her unit on December 20, 2024. She testified that she believes the Tenant entered her room and took the money and that the Tenant has a key to her room. She could not confirm that her door was locked at all times and there was no evidence of forced entry. She stated that the Tenant was present at the property that day and that they spoke, but no police report was made.
8. The Tenant denied the allegation. He testified that he does not have keys to MK's room and has no access to it. He explained that his unit is on the upper level and that reaching it requires passing MK's door and proceeding up an interior staircase. He stated that the landing outside MK's unit is a common area open to the public, including mail carriers and delivery personnel. He further testified that on December 20, 2024, his children had an early dismissal, that he left late in the morning to pick them up, and that he returned in the late afternoon. He stated that he did not enter MK's unit and did not remove cash or other items, and that he received no contact from MK, other tenants, or police about missing cash.

May 21, 2025 & August 6, 2025: Missing phones.

9. MK alleged that the Tenant entered her room on May 21 and August 6, 2025, and took two cell phones from inside her unit. After the first phone went missing, she purchased a replacement on May 22, 2025. The original device could not be tracked.
10. She further testified that on August 6, 2025, at about 10 a.m., the second phone was taken while she was mowing the lawn, and her unit door was open. She stated that only the Tenant was home at that time. Device location data showed pings beginning at 12:30 p.m., in the afternoon near the property, then moving away, and a return to the property at about 6:45 a.m., on August 7, 2025, when the Tenant returned.
11. MK stated that she received a text message from the Tenant's father indicating the phone would be returned, and that the Tenant returned both phones on August 18, 2025, without explanation. She did not ask the Tenant for an explanation due to fear and did not contact police for the same reason. She changed the locks in August 2025. At the hearing she submitted the text message from the Tenant's father, a photograph of the returned phones, and records of device tracking.
12. The Tenant denied entering MK's room or stealing the phones. He testified that his own phone and SIM card were unreliable, and that MK offered to sell him two phones so that he would be easier to reach. He testified that he purchased the first phone from MK around May 22, 2025, for \$100.00 in cash and the second on August 6, 2025, for the same amount. He stated that both transactions were verbal and without a receipt or witness. When MK sought to evict him, he returned both phones in good faith and did not ask for his money back because he wished to end the dispute.

July 31, 2025: Missing Coffee

13. MK testified that food and coffee kept outside her unit door in a common hallway were missing on July 31, 2025. She stated that the Tenant admitted opening the coffee and she believes he took the coffee and food. She also believes the Tenant removed food from her kitchen refrigerator around the time of the August 6 phone incident, although she acknowledged there is no independent proof of removal from the refrigerator.
14. The Tenant testified that MK keeps coffee and other groceries on shelving at the landing near her door. He denied taking coffee or food and stated that he has no access to MK's unit.

Law and Analysis:

15. Section 61(1) of the *Residential Tenancies Act, 2006* (the 'Act') provides as follows:

61 (1) 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. The Board's Interpretation Guideline 9 states that while the term illegal is not defined in the Act, it would include a serious violation of a federal, provincial or municipal law. This

guideline also states that an illegal act will be serious if it has the potential to affect the character of the premises or to disturb the reasonable enjoyment of other tenant (*Samuel Property Management Ltd. v. Nicholson* 2002 CanLII 45065 (ON CA), 2002 61 O.R. (3d) 470 C.A. at para. 28)

17. As this is the Landlord's application, the burden rests with the Landlord to prove on a balance of probabilities that the Tenant committed or permitted an illegal act, or carried on or permitted an illegal trade, business, or occupation in the rental unit or the residential complex.
18. On the evidence presented, I am not satisfied on a balance of probabilities that the Tenant committed or permitted an illegal act. The Landlord did not provide sufficient evidence to demonstrate that the Tenant entered MK's room on December 20, 2024, May 21, 2025, or August 6, 2025, and removed items without permission. The Landlord also did not provide sufficient evidence that the Tenant took coffee or food on July 31, 2025, or on August 6, 2025. There was no direct supporting proof such as security video, photographs, police reports, or other documentation to rebut the Tenant's testimony that he had no access to MK's unit and no keys.
19. With respect to the cell phones, I do not find that the Landlord has proven on a balance of probabilities that the Tenant entered her unit and stole the devices. To succeed, the Landlord's version of events must be more likely than not. The Supreme Court of Canada held in *F.H. v. McDougall*, 2008 SCC 53, at paragraph 46, that *civil proof requires evidence that is clear, convincing, and cogent*. This matter involves sharply conflicting accounts, sometimes described as a he said she said case. The correct approach is to consider the whole of the evidence and determine whether the party bearing the burden has met it, as explained in *R. v. W. D.*, 1991 CanLII 93. On this record, the Landlord has not done so.
20. I find there is insufficient evidence to conclude on a balance of probabilities that the Tenant entered MK's room and took the phones in May and August 2025. The evidence relied upon is largely circumstantial. The device tracking record from August 7, 2025, may show that the Tenant had possession of a phone, and counsel argued that the activity reflected MK's SIM card, which would be inconsistent with a sale. However, that evidence does not directly establish that the Tenant removed the phone from MK's room. This aspect of the claim is dismissed.
21. I therefore find that the Landlord has not proven that the Tenant committed an illegal act in the residential complex. The N6 notice is dismissed.

Compensation for substantial interference

22. The Landlord seeks \$902.00 for reasonable out of pocket expenses incurred to replace lost phones. For the reasons set out above, I find the Landlord has not proven that the Tenant substantially interfered with the Landlord's reasonable enjoyment of the residential complex, or with any other lawful right, privilege, or interest, by stealing the phones. This claim is dismissed.

23. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.

24. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The Landlord's application is dismissed.

January 09, 2026
Date Issued

Joy Xiao
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.