



**Order under Section 69 / 88.1
Residential Tenancies Act, 2006**

Citation: Cartagena v VICTOR, 2026 ONLTB 3251

Date: 2026-01-13

File Number: LTB-L-081163-25

In the matter of: 602 -Tower A, 3600 HIGHWAY 7
WOODBIDGE ON L4L0G7

Between: John Luis Cartagena Landlord

And

Melody Victor Tenant

John Luis Cartagena (the 'Landlord') applied for an order to terminate the tenancy and evict MELODY VICTOR (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

John Luis Cartagena (the 'Landlord') also applied for an order requiring Melody Victor (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 17, 2025.

The Landlord, the Tenant's Legal Representative, Brittney Rose-Ward 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/or 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.
3. On August 12, 2025, the Landlord gave the Tenant a first, voidable N5 notice of termination deemed served on the same date. This notice alleged that complaints were

received from property management and other tenants that the Tenant was smoking cigarettes in her unit on July 8, 2025 and July 18, 2025. Further the Landlord alleged that he received a legal letter from the condominium corporation providing him with a final warning and possible fines if the smoking did not stop.

4. I brought up a preliminary issue that no Certificate of Service was filed by the Landlord for the first N5 notice of termination and as such, I had no idea if the service complied with the Act. The Landlord advised that he served the N5 notice to the Tenant on August 12, 2025.
5. Further the Tenant confirmed that she was served with this first N5 notice on August 12, 2025. I was satisfied that the first N5 notice of termination was served to the Tenant on August 12, 2025 and the voiding period of 7 days commenced immediately after that date.
6. Prior to the Landlord's testimony, he became very frustrated that I had not reviewed all of the material that he had downloaded to the portal. He stated that he had spent a great deal of time downloading all of these documents to the portal and that this material was important to his case and that I needed to be aware of this evidence. I explained to the Landlord that he would have to present his evidence by identifying the documents with the evidence ID numbers and then he could request that they become evidence.
7. As the Landlord remained frustrated, I held the matter down for more than an hour so that the Landlord could familiarize himself with his documents and evidence identification numbers so that he could present his case.

Landlord's Evidence

8. The Landlord testified that he received complaints from the condo board that other tenants were complaining about his Tenant smoking cigarettes in her rental unit. He stated that he received a complaint on July 8, 2025 and July 18, 2025. He then stated that he received a letter from Horlick Condominium Law on August 1, 2025 that provided him with a final warning before legal action would be taken resulting in costs exceeding \$15,000.00.
9. The Landlord also testified that he received an invoice of \$3,124.45 from the condo corporation for their legal work regarding the smoking complaint. He stated that invoice should be paid the Tenant and he forwarded it to the Tenant for payment.
10. The Landlord stated that there is a smoking by-law which prohibits any smoking in the building and he produced a copy of that by-law. The Landlord testified that he spoke with the Tenant and advised her that she must stop smoking in the rental unit immediately.
11. In cross-examination, the Landlord was asked when the by-law regarding smoking was initiated by the condo corporation and he was asked when he shared that by-law with the Tenant. The Landlord stated that the by-law came into effect in April of 2021 and he informed the Tenant earlier about it and also reminded her about it on July 10, 2025.
12. In cross-examination, the Landlord was asked why he did not apply for the Tenant's apartment to be grandfathered so that this by-law would not affect her as the Tenant moved into the unit in 2019. The Landlord responded that he was not aware that the Tenant smoked and further that he did not want anyone smoking in his condo.

13. In cross-examination, the Landlord was asked to provide complaints that he received from the property management company during the voiding period from August 12, 2025 to August 19, 2025. The Landlord answered that he did receive smoking complaints during that period of time. The Landlord was given a few more minutes to locate those complaints. He was asked again by the Tenant's Legal Representative to provide the evidence ID number for the document that would show the complaints for that time period.
14. The Landlord requested that we look at Evidence ID#6934959 which was a letter dated August 1, 2025 from the condominium corporation. This document did not include any references to complaints about the Tenant for the period August 12, 2025 – August 19, 2025.
15. The Landlord was given a few more minutes to find his evidence but he was unable to produce any complaints about the Tenant's smoking during the voiding period.

Law and Analysis

16. Section 64 (1) of the *Residential Tenancies Act*, 2006 (hereinafter referred to as the "Act") states that "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. Further section 64(3) of the Act states that "the notice of termination under subsection (1) is void if the tenant within seven days after receiving the notice, stops the conduct or activity or corrects the omission."
17. As the Landlord was unable to provide any complaints during the voiding period of August 12, 2025 through August 19, 2025, I am satisfied that the Tenant voided the first N5 notice of termination.
18. As such, the Landlord was not allowed to give the Tenant a second, non-voidable N5 notice of termination under section 68 of the Act. The Landlord's application must be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

January 13, 2026
Date Issued

Carrie Bertrand
Member, Landlord and Tenant Board

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