



Order under Section 69 Residential Tenancies Act, 2006

Citation: Rizzo v McDonald, 2026 ONLTB 7422

Date: 2026-01-26

File Number: LTB-L-082822-25

In the matter of: Upstairs, 349 John Street
Thunder Bay ON P7B1X2

Between: Gabriel Rizzo Landlord

And

James McDonald Tenant

Gabriel Rizzo (the 'Landlord') applied for an order to terminate the tenancy and evict James McDonald (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.

This application was heard by videoconference on January 19, 2026.

The Landlord 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 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 29, 2025, the Landlord gave the Tenant an N6 notice of termination. The notice of termination contains the following allegations: August 21, 2025, drug trafficking operation by Thunder Bay Police resulted in arrest of the Tenant.
4. The Landlord testified that on August 21, 2025, the police conducted a search of the rental unit for cocaine. The Landlord found out about the search the same day it occurred by another tenant. The Landlord does not know any details except for the information contained in the police bulletin number TB25033502, dated August 25, 25, titled "Search

warrant results in seizure of suspected cocaine”. The bulletin says the Tenant was charged with possession for the purposes of trafficking (cocaine). The eviction should be granted because trafficking/drugs is a serious offence.

5. The Tenant testified his daughter moved in with him two weeks prior to the search; he did not know anything illegal was going on. After the incident, he kicked her out; he told the Landlord this. He is a long-term tenant and has not had any problems with the Landlord or the law until this happened. He has been charged, because it is his unit, but his defense is that he knew nothing about any drugs. He should not be evicted for something he had no knowledge of and his daughter has been kicked out since the incident.

Analysis

6. Section 61 of the *Residential Tenancies Act, 2006* (the ‘Act’) says:

(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.

(2) A notice of termination under this section shall set out the grounds for termination and shall provide a termination date not earlier than,

(a) the 10th day after the notice is given, in the case of a notice grounded on an illegal act, trade, business or occupation involving,

(i) the production of an illegal drug,

(ii) the trafficking in an illegal drug, or

(iii) the possession of an illegal drug for the purposes of trafficking

(b) the 20th day after the notice is given, in all other cases.

7. A landlord who gives a tenant a notice of termination pursuant to section 61(1) of the Act must establish on a balance of probabilities that either the tenant or an occupant committed the illegal act or the tenant or an occupant permitted a person to commit the illegal act.
8. Section 75 of the Act says the “Board may issue an order terminating a tenancy and evicting a tenant in an application under section 69 based on a notice of termination under section 61 whether or not the tenant or other person has been convicted of an offence relating to an illegal act, trade, business or occupation”. Here charges have been laid but are still pending trial.
9. Although the Tenant is not disputing there was a search warrant that resulted in him being charged, the only evidence presented by the Landlord was a police bulletin. The Landlord did not know any specifics. I find this is not sufficient evidence to meet the test under the

Act. In under *Bogey Construction Limited v Boileau* [2002] O.J. No. 1575 (Ont. Div. Ct.), the Court said that the proof is to be commensurate with the gravity of the allegation(s). Here the Landlord could not give any details; he was relying on what was in the police bulletin.

10. For these reasons, I find the Landlord did not prove that the Tenant committed an illegal act, trade, business or occupation involving the production of, or trafficking in an illegal drug, or possession of an illegal drug for the purposes of trafficking. The Landlord's application shall be dismissed.
11. Even if, because the Tenant is not disputing the event, the evidentiary burden should be considered met, the application must still be dismissed. This is a long-term Tenant who has no criminal record except for this incident; I find it improbable that he would suddenly engage in such serious criminal activity. I accept that his daughter, who had only lived with him a matter of weeks, was immediately kicked out. Section 83(1)(a) of the Act says: Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement, refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to refuse. I find that based on the facts in this case, it would not be unfair to refuse eviction, and the application be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

January 26, 2026
Date Issued

Diane Wade
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.