



Order under Section 78(6) Residential Tenancies Act, 2006

Citation: Wammes v Wells, 2026 ONLTB 10578

Date: 2026-02-05

File Number: LTB-L-098138-25

In the matter of: 6, 5931 PERTH ST
RICHMOND ON K0A2Z0

Between: Henry Wammes Landlord

And

Nansi Wells Tenant

The Landlord applied for an order to end the tenancy and evict the Tenant because the Tenant failed to meet a condition specified in the order issued by the Board on October 1, 2025 with respect to application LTB-L-049063-25.

A hearing was held by videoconference on January 19, 2026 to consider this application.

The Landlord, the Landlord's representative M. Connolly, the Landlord's witness Elizabeth Revells, the Tenant, and the Tenant's representative C. Azzi attended the hearing.

Determinations:

1. The Landlord alleges the Tenant failed to meet a condition specified in the order issued by the Board on October 1, 2025 with respect to application LTB-L-049063-25 (the "Section 78 Order").
2. The Section 78 Order provided that the Landlord could apply to the Board under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant did not meet certain condition(s) specified in the order.
3. In particular, the Section 78 Order proves that that the Tenant shall "*not smoke in the rental unit*". The Landlord alleges the Tenant breached this condition by smoking in the rental unit in the early evenings of November 14-16, 2025.
4. There are 5 side-by-side units in the residential complex, with the Tenant residing in one of the end units.

5. The Landlord Henry Wammes ("HW") testified he received a phone call from the Tenant's adjoining neighbour Elizabeth Revells (ER) in November 2025 complaining about the smell of smoke coming into her unit from the Tenant's unit. HW added the Tenant's smoking in the rental unit has been an ongoing, long-term issue.
6. The Landlord's witness ER resides adjacent to the Tenant and testified as to the smell of smoke coming in her unit (in the front living room area) on November 14-16, 2025 from approximately 5pm-8pm. ER testified the Tenant is the only resident who smokes within the 5-unit residential block and ER noted the Landlord has performed mitigation work, including "sealing" holes/vents in her unit. ER does not like the smell of smoke and testified it bothers her sinuses. ER further stated the Tenant could not be outside because the smell of smoke would only come into her front living room area when the Tenant smokes inside.
7. On cross-examination, ER revealed that her friendship with the Tenant has deteriorated over time. Notwithstanding ER's testimony about being adversely affected by the smell of smoke, ER revealed that she used to smoke alongside the Tenant in the past and in fact, herself, continues to smoke outside.
8. The Tenant Nansi Wells ("NW"), on the other hand, vigorously denied smoking inside her rental unit, contrary to the Section 78 Order. The Tenant testified she smokes, but states all smoking is conducted outside or in her vehicle. NW also advised that she is aware of other Tenants in the larger (16 unit) residential block who smoke.
9. The onus to prove the allegations in this Application rests with the Landlord.
10. While there is no requirement for the Landlord to advise the Tenant before filing an L4 Application, in the circumstances it seems somewhat unusual that neither the Landlord nor the neighbour ER spoke to the Tenant at the time of the purported contravention, or thereafter. It also appears unusual that notwithstanding ER's testimony of being adversely impacted by the smell of smoke – smoking which purportedly occurred for 3 straight days in November – that no inquiries were made with the Tenant to confirm the location of the smoke and/or to request that the Tenant cease any purported smoking in the unit. The Landlord witness ER testified the smell of smoke would not otherwise come into her unit unless the Tenant was smoking inside, however, this assertion appeared somewhat speculative and in the absence of any other independently supported evidence, was not entirely convincing.
11. The Tenant and ER are admittedly not on the best of terms and the Tenant strongly denied smoking in her unit. In the circumstances and given the close proximity of both parties' front outdoor entrances, I am not satisfied the Landlord has discharged their onus of proving that the Tenant smoked inside the rental unit (as opposed to some other location). The Landlord's application is accordingly, dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

February 5, 2026

Date Issued

Peter Nicholson

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.