



Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-080096-25

In the matter of: 308, 2 MADOC STREET
MARMORA ON K0K2M0

Between: Marmora District Housing Commission Landlord

And

Carol Maidansky Tenant

Marmora District Housing Commission (the 'Landlord') applied for an order to terminate the tenancy and evict Carol Maidansky (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

This application was heard by videoconference on January 21, 2026.

Only the Landlord's Agent and the Landlord's Witnesses, Richard Davidson and Pamela Ogburn attended the hearing.

As of 11:31 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. Therefore, the tenancy is terminated.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Landlord's application is based on a second N5 notice of termination.
4. On August 20, 2025, the Landlord gave the Tenant a first, voidable N5 notice of termination deemed served on August 20, 2025. The N5 notice of termination alleges that on August 20, 2025, cigarette smoke emanated from the Tenant's unit into the common hallway of the residential complex and adjacent rental units and this interfered with the

reasonable enjoyment of other tenants. 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. Subsection 64(1) of the *Residential Tenancies Act, 2006* (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.

6. Subsection 64(3) of the Act states that a 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.
7. The Landlord testified that the Tenant voided the N5 notice.
8. Based on the uncontested evidence before me, I was satisfied that the Landlord served a valid first N5 notice. The Tenant stopped the conduct or activity or corrected the omission within seven days after receiving the N5 notice of termination. Therefore, the Tenant voided the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
9. Pursuant to subsection 68(1)(b) of the Act, the Landlord was entitled to serve a second, non-voidable N5 notice of termination.
10. Subsection 68(1) of the Act states:

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

(a) a notice of termination was given to the tenant under section 62, 64 or 67; and

(b) more than seven days but less than six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct occurs or a situation arises that constitutes grounds for a notice of termination under section 60, 61, 62, 64 or 67, other than an activity, conduct or a situation that is described in subsection 61 (1) and that involves an illegal act, trade, business or occupation described in clause 61 (2) (a).

11. On September 24, 2025, the Landlord gave the Tenant a second N5 notice of termination deemed served on September 24, 2025. The notice of termination contains the following allegations:

- a. On September 19, 2025 at approximately 10:00 a.m., the Landlord's office manager smelled smoke emanating from the Tenant's rental unit.

- b. On September 20, 2025 and September 21, 2025 another resident of the residential complex complained to the Landlord about cigarette smoke emanating from the Tenant's rental unit into the common hallways of the residential complex.
- c. On September 24, 2025 at 8:30 a.m., the Landlord's office manager smelled cigarette smoke emanating from the rental unit into the common hallway of the residential complex.

12. The lease agreement at paragraph 9 states:

Effective Tue., Oct. 22nd, 2013 all new leases (new tenants and transfers) signed with The Housing Provider will provide that smoking is prohibited inside the building, including private units, patios and balconies. Existing tenants will be grandfathered (exempted) for the length of their tenancies, unless they choose to sign a smoke-free policy lease addendum. Copies of the smoke-free policy are available upon request to the Landlord.

The Tenant agrees and acknowledges that the premises to be occupied by the tenant and members of the tenant's household have been designated as smoke-free (including marijuana & e-cigarettes. Thereby, the tenant, members of the tenant's household, visitors, guests, and business invitees shall not smoke anywhere in the unit rented by the tenant, or building where the tenant's dwelling is located or in any of the common areas of such building including balconies and/or patios...

- 13. The Tenant's lease agreement began on October 1, 2025 and the Tenant initialled beside the paragraph acknowledging that smoking is prohibited inside the building including in her unit, patio and balcony.
- 14. The Landlord's Witness, Richard Davidson ('RD') testified that on August 20, 2025, September 2, 2025, September 23, 2025 and October 5, 2025, smoke emanated from the rental unit into his unit and into the common areas of the residential complex.
- 15. The Landlord's Agent, Karen Hare ('KH') also testified that on September 19, 2025 and September 24, 2025 she smelled smoke emanating from the Tenant's rental unit. KH testified she has also received numerous complaints from tenants about smoke emanating from the Tenant's unit.
- 16. KH testified that on May 16, 2025, she spoke with the Tenant and reminded the Tenant that she is not to smoke in her unit or common areas of the residential complex. KH testified that she does not believe the Tenant will cease smoking in the rental unit as the Tenant has not ceased smoking in the rental unit despite numerous requests from KH not to smoke in the rental unit.
- 17. In *Hassan v. Niagara Housing Authority* 2001 CarswellOnt 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. Reasonable steps may include commencing an eviction proceeding against the offending tenant. A landlord's failure to take adequate steps against the offending tenant may leave them vulnerable to applications filed by the affected tenants.

18. In the case of *North Avenue Road Corporation v. Tom Travares*, 2015 ONSC 6986 (Div. Ct.), the Divisional Court dealt with a very similar case regarding smoking, in which 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 s. 20 of the Act. Further 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.”
19. Based on the evidence before me, I am satisfied on a balance of probabilities that the Tenant’s cigarette smoking has substantially interfered with the reasonable enjoyment and lawful right, privilege or interest of the Landlord and other tenants. I accept the evidence of KH and RD that cigarette smoke frequently emanates from the Tenant’s unit and enters the common areas and other tenants’ rental units. I also accept the Landlord’s evidence that the Tenant has been reminded not to smoke in the rental unit by the Landlord to no avail.
20. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
21. The Landlord sought termination of the tenancy. KH testified that the residential complex is a senior’s complex and that the tenant’s rent is subsidized.
22. 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.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant shall ensure that neither she, nor her occupants or guests smoke in the rental unit, on the patio, balcony or in the common areas of the residential complex, nor shall the Tenant allow smoke to emanate from her unit.
3. If the Tenant fails to comply with 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. The total amount the Tenant must pay the Landlord is \$186.00.

6. If the Tenant does not pay the Landlord the full amount owing on or before March 1, 2026, the Tenant will start to owe interest. This will be simple interest calculated from March 2, 2026 at 4.00% annually on the balance outstanding.

February 18, 2026
Date Issued

Christopher Lin
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.