



Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-088048-25

In the matter of: 1, 228 WHITTAKER ST
SUDBURY ON P3C3X5

Between: 812840 ONTARIO INC. Landlord

And

JASON SMITH Tenant

812840 ONTARIO INC. (the 'Landlord') applied for an order to terminate the tenancy and evict JASON SMITH (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

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on January 20, 2026.

The Landlord's Legal Representative, Jennifer Murray, the Landlord's witness, Matthew Laplante, the Landlord, the Tenant's Legal Representative, Nathan Boivin, the Tenant's Support, Tammy Smith, 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 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 September 15, 2025, the Landlord gave the Tenant an N5 notice of termination deemed served on September 20, 2025. The notice of termination contains the following allegations: the Tenant has been substantially interfering with other tenants' reasonable enjoyment due to smoking complaints.

4. The Landlord testified that the Tenant resides in the basement unit and there are 3 floors in the building with 1 unit on each floor. He has been receiving complaints for about 2 years now about the Tenant smoking. The Landlord testified that the Tenant is the only person who smokes in the building. The Landlord ensures that he follows his obligations as a landlord and takes complaints seriously as this complaint is a health issue.
5. The Landlord further testified that the tenant above is elderly, and she suffers from cancer and is sensitive to smoke. The Landlord provided documentation evidence of a complaint from August 21, 2025, about the smell of cigarette smoke in the building. I reviewed this text message from "Matt", another tenant in the building, and although it states that they could smell smoke in the building, nothing in this message specifically references the Tenant of the Tenant's unit.
6. The Landlord provided photographs as evidence to show that the window outside the Tenant's unit were stained and these are nicotine stains. Upon review of these photos, I find that there is no apparent, concrete and objective basis to conclude that these stains are from nicotine to corroborate the Landlord's testimony that this is the case. The Landlord testified he has samples to prove it was nicotine, but there is nothing before me to confirm this.
7. The Landlord testified that the Tenant did not void the 1st N5, during the voiding period from September 21, 2025, to September 28, 2025, as complaints continued during this time.
8. The Landlord testified that the steps to remove the nicotine that is on the walls of the Tenant's unit will require drywall to be removed and reinstalled, and the ceiling, the walls, and the floors will need to be replaced. In addition, the unit will need to be repainted.
9. The Landlord further testified that there isn't a single time that he has inspected the Tenant's unit and that it doesn't smell like smoke, but when he meets the Tenant outside, he is smoking outside. The Landlord testified that the fire department got called to the building in 2025, as the windows were open and it was a hot day, and the Tenant was smoking outside the windows which resulted in the smoke alarm going off. The fire alarm stopped once the smoking stopped.
10. During cross examination, the Landlord testified that he took most of the photos, not all of them. The Landlord testified that there is no designated smoking area as it is a nonsmoking premises, and he has personally spoken with Tenant about it being a nonsmoking premises. The Landlord further testified under cross examination, that there is no lease or anything in writing. The Landlord did not have any documentation evidence to support the complaints he received before September 2025, as they were all over the phone. All the incidents for which he had documentation evidence occurred between June 2025 and August 2025.
11. The Landlord's witness, Matthew Laplante testified that his unit is on the floor above the Tenant but across the hall, and that smoking is a huge issue. He has been complaining about the smoking for about 2-3 years, and he reacts poorly to 2nd hand smoke, as he does not smoke himself. He testified that no one else in the building smokes. The Landlord's witness could not give specific date about the complaints, he would either text, email or call the Landlord with his complaints.

12. Matthew Laplante further testified that he has smelled smoke inside his unit in the kitchen and bedroom areas, and that the smell is overpowering. He is unsure if the ventilation is shared, but he has made numerous complaints to the Landlord.
13. During cross examination, Matthew Laplante confirmed he was a smoker about a decade ago but no longer smokes. He testified that he had the dates of all his complaints written on a calendar, but he did not have it readily available.
14. During redirect of Matthew LaPlante's evidence, he testified that the smoking hasn't been as big of an issue as it has been in the past or as often. He recalls speaking with the Landlord in the fall but does not recall the date.
15. The Tenant testified he is a smoker, but as of March 2025 after having a conversation with someone within the building, he does not smoke in his unit. He testified that he smokes depending on the weather on the sidewalk or a couple feet from the entrance, or in the back-alley way, and that it is well over 40 feet from the public sidewalk. He further testified that there is nothing in his lease agreement about no smoking, and there is no designated smoking area. The Tenant provided photos as evidence to show the condition of his apartment to show it is clean and that he does not smoke in the rental unit.
16. The Tenant testified that there are roughly 8 other tenants in the building, and that 2 are smokers, and 1 is trying to quit. The other tenant who the Landlord claims to have cancer is a smoker along with her partner, have been there for 26 years and they smoke. The Tenant further testified that 1 of the smokers' lives across the hall from the Landlord's witness, Matthew Laplante.
17. In addition, the Tenant testified that he has resided in his unit for 13 years, and there has been smoking in the building well over 30 years, and that if a no smoking policy within the building is new, there will still be residual effects of the smell of smoke within the building.
18. The Tenant testified that when the fire department was called, it was not for their building or for a smoke alarm, it was the building next door, and that the fire department was not at their building.
19. During cross examination the Tenant testified that there are oil marks and dirt on his steel door, and that it was not from smoking as he does not smoke in his unit any longer, and to remove those marks will require new paint.
20. In *P. v. Tenant of TB*, the Landlord and Tenant Board (the 'Board') found that there was no substantial interference with reasonable enjoyment or with a right, interest or privilege where the Tenant smoked in her unit and the tenancy agreement contained no prohibition on smoking.
21. Similarly, as in the present case, there was no prohibition on smoking in the rental unit when the tenant moved into the residential complex in File No. NOL-12066-13. However, in that case, more recent tenants had agreed to a non-smoking term in their tenancy agreements. The Board held that the tenant was entitled to smoke in his own rental unit and that the landlord was responsible for taking steps to seal gaps that may allow smoke to spread to other units or treat the air and to remove the smell of smoke from common areas.

22. Pursuant to paragraph 5 of subsection 12(1) of the Smoke-Free Ontario Act, 2017, smoking is prohibited in “any indoor common area in a condominium, apartment building or university or college residence, including, without being limited to, elevators, hallways, parking garages, party or entertainment rooms, laundry facilities, lobbies and exercise areas.” As a result, the issue relates to whether the Tenant has a right to smoke in his own enclosed rental unit.
23. As there was no term in the tenancy agreement that prohibited smoking and the parties neither re-negotiated the agreement nor agreed that the Tenant may no longer smoke in the rental unit, I do not find that the Tenant has substantially interfered with a lawful right of the Landlord to prohibit smoking in the rental unit or the residential complex, even though the Tenant testified that he no longer smokes in his unit.
24. I am not satisfied that the Landlord has proven that the Tenant smokes inside the rental unit.
25. I am not satisfied that the Landlord proved on a balance of probabilities that the Tenant has substantially interfered with other tenant’s reasonable enjoyment or the landlord’s lawful rights for my reasons noted above.

It is ordered that:

1. The Landlord’s application is dismissed.

February 12, 2026

Date Issued

Samantha Greaves

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on September 3, 2026 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.