



Order under Section 69 Residential Tenancies Act, 2006

Citation: PRESSLEY INVESTMENTS LTD v TODD, 2026 ONLTB 15242

Date: 2026-02-18

File Number: LTB-L-095275-25

In the matter of: 1, 154 WILLIAM ST GD 0
VICTORIA HARBOUR ON L0K2A0

Between: PRESSLEY INVESTMENTS LTD Landlord

And

KARL TODD Tenant

PRESSLEY INVESTMENTS LTD (the 'Landlord') applied for an order to terminate the tenancy and evict KARL TODD (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 February 11, 2026.

The Landlord's Legal Representative Lawrence Pomfret, the Landlord Gary Burgess and Brenda Pressley, the Tenant's Agent Lindsay Danko 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 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. N5 Notice of Termination - Substantial interference

On November 11, 2025, the Landlord gave the Tenant an N5 notice of termination, which was deemed served on November 16, 2025, with a termination date of December 2, 2025.

Landlord's Evidence

4. The Landlord called Gary Burgess and Brenda Pressley, joint owners of the property.

5. The Landlord's first witness Gary Burgess testified that he has longstanding respiratory issues. He has repeatedly observed ashtrays, cigarette butts, and smoking paraphernalia on the Tenant's deck and inside the rental unit. He claims that smoke travelled upward into his unit, which causes breathing difficulty.
6. The Landlord's next witness was Brenda Pressley. She testified that she suffers from chronic lymphocytic leukemia and that she regularly smelled smoke in the common areas and in her rental unit.
7. She claims that smoke also travelled upwards and as a mitigation measure, she would open windows and use fans for air circulation. Lastly, she observed the Tenant smoking on the deck on numerous occasions.
8. Both the Landlord's witness testified that the building is a small, multi-unit, wood frame building constructed in 1902. The Landlord resides directly above the Tenant's rental unit, the Tenant acknowledges this fact.
9. Smoking was prohibited from the outset of the tenancy, and communicated verbally to all tenants, including Mr. Todd. Lastly, both Landlords testified that smoke has repeatedly entered the Landlord's unit through doors, decks, and ventilation.

Tenant's Evidence

10. The Tenant Mr. Todd testified that he has smoked inside the rental unit for approximately three and a half years. He stopped smoking inside the rental unit after signage appeared while he was hospitalized.
11. Mr. Todd testified that he now smokes on the deck, this is because he has mobility limitations coming up and down the stairs. He acknowledges there is a designated smoking area, but he finds it difficult to access given his limited mobility.
12. During his testimony, the Tenant stated he continues to smoke daily on the deck, he wishes to remain in the rental unit and not be evicted. I find that the Tenant did not deny smoking on the deck, nor did he provide medical documentation establishing that smoking indoors or on the deck is a required as an accommodation.

Analysis

13. Under section 64 of the RTA, the Landlord bears the onus of proving, on a balance of probabilities, that:
 - The Tenant engaged in conduct that substantially interfered with reasonable enjoyment or impaired safety; and
 - The conduct occurred on identifiable occasions, particularly after service of the N5 notice(s).

14. The Board cannot rely on speculation, general impressions, or historical conduct alone. The evidence before the Board must establish when the alleged conduct occurred so that I can assess whether it occurred within the relevant notice period and whether the Tenant failed to correct the behaviour after notice.
15. The Landlord elected to call two witnesses who testified generally about smelling smoke and observing ashtrays and cigarette-related items.
16. Upon review of the Landlord's testimony, I find that:
 - The Landlord did not provide reliable evidence of specific dates or times when the Tenant smoked in the unit or in a manner that caused smoke migration after the N5 notices were served.
 - The witnesses repeatedly acknowledged they could not identify when the alleged smoking occurred.
 - No contemporaneous notes, logs, photographs, videos, or third-party corroboration were produced.
 - The testimony relied heavily on generalized impressions rather than discrete incidents.
17. Although, the Tenant admitted to smoking historically and to smoking on the deck but denied smoking inside the unit after notice. That denial was not effectively contradicted without time-specific evidence.
18. While I do not doubt that the Landlord finds cigarette smoke unpleasant or concerning, discomfort alone is insufficient to grant eviction without proof that the Tenant breached the 'Act' in the manner alleged and within the relevant timeframe.
19. Without evidence of dates and times, I cannot determine whether the conduct occurred after the Tenant was put on notice, whether the Tenant failed to correct the behaviour within the statutory period, and whether the conduct was ongoing at the time of the application.
20. I cannot rely on inference or speculation to fill the evidentiary gaps in the evidence. To do so would improperly reverse the burden of proof.
21. I find that the Landlord has failed to meet the burden of proof required under section 64 of the 'Act', particularly due to the lack of credible evidence establishing the specific dates and times of the alleged smoking incidents.
22. For all the reasons given above, the Landlord's application shall be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

February 18, 2026
Date Issued

Anthony Bruno
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.