



Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-082490-25

In the matter of: 255 LOAM PVT
ORLEANS ON K1W0T5

Between: Richcraft Rental Limited Partnership Landlord

And

D'arcy McDonell Tenants
Renee McDonell

Richcraft Rental Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict D'arcy McDonell and Renee McDonell (the 'Tenants') because the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another Tenants

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

This application was heard by videoconference on January 13, 2026.

The Landlord's representative, David Lyman, the Landlord's agent, Jason Brown, and the Tenants 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 Tenants were in possession of the rental unit on the date the application was filed.

N5 Notice of Termination - Substantial interference

3. On June 23, 2025, the Landlord gave the Tenants a first, voidable N5 notice of termination ("first N5 notice"), with the termination date of July 20, 2025. Therefore, the Landlord was allowed to give the Tenants a second, non-voidable N5 notice of termination under section 68 of the *Residential Tenancies Act, 2006* (Act). The first N5 notice alleges that the

Landlord's agent observed one of the Tenants smoking in the rental unit's garage and that smoking within 25 feet of the residential complex is prohibited under section 10 of the lease.

4. On October 2, 2025, the Landlord gave the Tenants a second N5 notice of termination ("second N5 Notice"), with the termination date of October 16, 2025. The notice of termination contains the following allegations:
 - a) On September 25, 2025 at 9:25 p.m., the Tenants' neighbour was disturbed by the smell of a cigarette emanating from the Tenants' rental unit; and
 - b) On September 29, 2025 at 1:00 a.m., the Tenants' neighbour was again disturbed by the smell of cigarettes emanating from the rental unit.
5. The Landlord called Jason Brown ("J.B.") forward as a witness. J.B. testified that he is a property manager for the Landlord and has been in this role for 5 years. J.B. said that he had received numerous complaints from the other Tenants in the residential complex regarding the smell of smoking coming from the Tenants' rental unit. The Tenants challenged J.B.'s evidence. Specifically, the Tenants asked if J.B. had ever personally observed either of the Tenants smoking in the rental unit on either September 25, 2025 or September 29, 2025. J.B. confirmed that he did not personally observe this, nor has he ever personally seen the Tenants' smoking.
6. Next, the Landlord called Roger Beaudoin ("R.B.") forward as a witness. R.B. testified he is the building operator for the Landlord and that he is familiar with the Tenants' rental unit. R.B. testified that he has observed the Tenants' rental unit garage being open in the summertime and that he has personally smelt marijuana or cigarette smoke emanating from the garage. The Tenants challenged R.B.'s testimony and asked if R.B. had ever been inside the rental unit's garage. R.B. confirmed that he had never been inside the rental unit's garage nor had he ever filed any reports about the Tenants' smoking in their rental unit.
7. The Landlord then called Monique Vailleres ("M.V.") forward as a witness. M.V. testified that she is the direct neighbour backing onto the Tenants' rental unit. M.V. testified that she was not aware of any smoking incident on September 25, 2025 or September 29, 2025, but she in general has smelt smoke emanating from the rental unit. M.V. challenged M.V.'s testimony and asked if she had ever seen him smoking. M.V. said just once in July 2024, but never since.
8. The Landlord then called Katie Eailfre ("K.E.") forward as a witness. K.E. testified she directly neighbours the rental unit and has lived there since September 2024. K.E. testified that she has smelt smoke coming from the Tenants' rental unit. The Tenants challenged K.E.'s testimony, specifically whether or not she had ever seen either Tenants smoking. K.E. testified she had never personally observed either of the Tenants smoking since she has lived in the rental unit, nor can she be certain that the smell of smoke is coming from the Tenants' smoking in the rental unit.
9. I find that the Tenants have successfully challenged the Landlord's evidence. I am not satisfied that the Tenants have substantially interfered with the Landlord's or other Tenants reasonable enjoyment of the rental unit by smoking less than 25 feet from the residential complex. I make this finding because the Tenants testified they do not smoke. Nor has the

Landlord been able to establish any witnesses to speak to the September 25, 2025 or September 29, 2025 smoking incident. The second N5 notice was brought forward on two smoking incidents, but the Landlord was unable to establish the Tenants' were the ones smoking on those dates. The Landlord's agents testified to smelling smoke at the Tenants' rental unit on several occasions - the Landlord ought to have inspected the rental unit to determine if the smell of cigarettes was in fact apparent in the rental unit. Based on the number of complaints they received regarding the smoke smell, I find it unreasonable for a Landlord to not investigate the smell of smoke in a non-smoking rental unit. The Landlord agents all agreed they had never inspected the rental unit, nor did any witness personally observe the Tenants' smoking on September 25, 2025 or September 29, 2025. Therefore, the Landlord's application is dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

March 6, 2026
Date Issued

Vishal Nanda
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.