



Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-088815-25

In the matter of: 1013, 8717 RIVERSIDE DR E
WINDSOR ON N8S1G6

Between: Hazelview Property Services Landlord

And

Clarence Walsh Tenant

Hazelview Property Services (the 'Landlord') applied for an order to terminate the tenancy and evict Clarence Walsh (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 February 4, 2026.

The Landlord's Legal Representative, Cameron Parrott, the Landlord's Agents, John Aird and Zsuzsanna Kertesz, and the Landlord's Witness, Laura Parent, attended the hearing.

As of 10:29 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 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 11, 2025, the Landlord gave the Tenant a first, voidable N5 notice of termination, deemed served September 16, 2025. Within this voidable N5 notice of termination it included various dates between June 23, 2025, and September 9, 2025, that

the Tenant was smoking within their rental unit causing the hallway and common areas to smell like cigarette smoke. 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).

4. On October 14, 2025, the Landlord gave the Tenant a second N5 notice of termination. The notice of termination contains the following allegations: on September 27, 2025, cigarette smoke was detected from the Tenant's unit which the smell was going into the hallway and common areas of the building causing other tenants to complain.
5. The Landlord's Agent, Suzsanna Kertez, testified that she has received complaints from Laura Parent, who is another tenant within the same rental building, of the smell of cigarette smoke entering her unit and the hallway. In addition, 3 other tenants have complained of the cigarette smoke smell.
6. The Landlord's Agent further testified that on September 16, 2025 she attended the rental unit, and when the Tenant opened the door to her rental unit, the smoke and smell entered the hallway. At that time she advised the Tenant to stop smoking in her unit.
7. The Landlord's Agent testified there is a lease in place, but it is month to month, and there are no terms in the lease that prohibit the Tenant from smoking in the unit. There is proper signage on the doors and the common areas in the building that say no smoking.
8. Laura Parent, testified that she has been a tenant in unit 1010 since March 1, 2025, and lives directly across the hall from the Tenant. She testified that the smoke is coming from across the hall, and the neighbours in unit 1009. She notices the smell when she opens her bedroom window, and the smoking from unit 1009 comes through her window when she has the window open. She further testified that she believes the smoke smell in her unit also comes from 1013 based on her discussions with other neighbours.
9. Laura Parent testified that it smells like someone is smoking within her own unit, that is how strong the smell is on some days, and it is a daily issue. She testified that she was notified that unit 1013 and unit 1009 were given notices about the rules of the building and smoking within the units. As far as she knows, unit 1009 has stopped smoking in their unit.
10. In addition, Laura Parent, testified that she has been offered other units, but there is smoking on floors 1 and 2 and her moving into another unit would not fix the issue because she would just be moved to another neighbour who smokes. She testified that the Tenant is not the only tenant who smokes inside their unit, he is just the only tenant/unit that directly affects her.
11. In *SOL-03299-19 (Re), 2019 CanLII 126894*, 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.
12. Similarly, as in the present case, there was no prohibition on smoking in the rental unit when the tenant moved into the residential complex. 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.

13. 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.” However, the legislation does not address smoking within one’s enclosed rental unit.
14. 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.

It is ordered that:

1. The Landlord’s Application is dismissed.

March 18, 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.