



Order under Section 69 / 89 Residential Tenancies Act, 2006

Citation: Al-Chaer v McNamara, 2026 ONLTB 22086

Date: 2026-03-17

File Number: LTB-L-102943-25

In the matter of: 3, 115 KING ST GD 0
CHELMSFORD ONTARIO P0M1L0

Between: Mohammed Al-Chaer Landlord

And

Thomas McNamara Tenant

Mohammed Al-Chaer (the 'Landlord') applied for an order to terminate the tenancy and evict Thomas McNamara (the 'Tenant') because the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex and has wilfully caused undue damage to the premises.

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on February 26, 2026.

Only the Landlord attended the hearing.

As of 9:40 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:

Preliminary issues

Application is amended

1. On December 15, 2025, the Landlord filed a request to amend the application to reflect that the city in which the unit is located is Chelmsford, not Pickering. The N7 notice identifies the

address for the rental unit as Greater Sudbury and Chelmsford is a community within the City of Greater Sudbury. I was satisfied that there was no prejudice to the Tenant in amending the application to reflect the unit address as Chelmsford instead of Pickering. The application was amended accordingly.

Service of N7 notice by email

2. The Landlord confirmed that that N7 notice of termination was served on the Tenant by email on December 15, 2025. He produced a copy of the tenancy agreement [Doc 7449933] which confirms that the Tenant consented to receive notices and documents by email and provided the Landlord with an email address for that purpose. As such, I was satisfied that the N7 notice had been properly served on the Tenant.

Confidentiality Motion

3. At the hearing, the Landlord withdrew his confidentiality motion.

The Application

4. As explained below, the Landlord has not proven on a balance of probabilities the claim for compensation in the application. Therefore, the application is dismissed.
5. The Tenant was in possession of the rental unit on the date the application was filed.
6. The Tenant vacated the two-bedroom rental unit on February 8, 2026.
7. The Landlord testified that the Tenant was smoking in the unit for several months and that he had been advised by his property manager and other Tenants that there is a strong smell of cigarettes throughout the unit. After the Tenant vacated the unit, the property manager washed the walls in the unit with soap and water, but the odour was still present.
8. The Landlord expects it will cost \$1,531.00 to eliminate the smell of cigarettes in the unit because the remediation will require:
 - Rental of an ozone generator
 - Three coats of a specific, premium paint (i.e. Killz)
 - Labour costs (property manager will paint)
9. The Landlord confirmed that his property manager will be painting the unit and that he will not know the final cost until the work is completed. In his experience, it will likely be higher than what he is claiming because in the past, he dealt with a similar situation in another unit and in that instance, the drywall actually had to be removed. He admitted however, that the Tenant in that unit had been smoking for two years, not a couple of months.

Analysis

10. For the following reasons, I am not satisfied that the Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex. First, the Landlord did not

call any witnesses, such as his property manager or other tenants, who had actual knowledge of the cigarette odour and relied on hearsay evidence. While the *Statutory Powers Procedure Act, 1990* permits administrative tribunals to allow hearsay evidence, in *Manikam v. Toronto Community Housing Corporation*, 2019 ONSC 2083, the Divisional Court found that tribunals must first assess whether the hearsay evidence is necessary and reliable. I find that the hearsay evidence was neither reliable nor necessary as there was no reasonable explanation provided as to why the Landlord's property manager or other tenants could not have attended the hearing to present direct evidence. The Landlord admitted that he had never personally smelled the cigarette odour in the unit. As such, he had no direct knowledge of the damage.

11. Second, the Landlord's estimate of what it will cost to eliminate the cigarette odour is speculative. It is based on his experience dealing with a similar situation in another unit. In that instance, however, the tenant had been smoking in the unit for two years whereas in this instance, the Tenant had only been smoking in the unit for several months. There is neither a written estimate nor testimony from the person who will be carrying out the work, i.e. the property manager. There was no evidence before me that the labour expended by the Landlord's property manager to paint the unit would be outside of the scope of the property manager's normal duties.
12. I find that the Landlord has not proven that the Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex by smoking in the unit or that it will cost the Landlord \$1,531.00 to eliminate the cigarette odour from the unit. Therefore, the Landlord's application is dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

March 17, 2026
Date Issued

 Karen Gonçalves
 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.