



**Order under Section 69 / 88.1 / 89
Residential Tenancies Act, 2006**

File Number: LTB-L-014053-25

In the matter of: 8, 15 VICTORIA LANE
ZURICH ON N0M2T0

Between: Janet Yates Landlord

And

Benjamin Steele Tenant

Janet Yates (the 'Landlord') applied for an order to terminate the tenancy and evict Benjamin Steele (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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises

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

Janet Yates (the 'Landlord') also applied for an order requiring Benjamin Steele (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.

Janet Yates (the 'Landlord') also applied for an order requiring Benjamin Steele (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on August 20, 2025.

The Landlord, the Tenant and the Tenant's Legal Representative, Lindsey Branje 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. Therefore, the application is dismissed.

Preliminary Issue – Service of the N5 Notice

2. The Tenant raised a preliminary issue that he had not been served with the N5 notice of termination. The Landlord testified that they pushed the N5 notice under the door and also served the document via email on February 4, 2025. The Tenant testified at the hearing that there is insufficient space under the door to push the documents under the door.
3. Photos of the door were entered into evidence and based on the evidence before me, I was not satisfied that the Landlord was able to serve the N5 notice under the door as the Landlord alleges as there was no space between the door and the floor to serve the notice as the Landlord alleges.
4. With regards to the N5 notice being served by email, there was no evidence led that the Tenant consented in writing to service by email, or that the Tenant actually received he emailed N5. While there was evidence of the Tenant's discussion with the Landlord about the maintenance issues, I was not satisfied that the N5 was served by email.
5. As I was not satisfied that the N5 notice was properly served, the Landlord's application for termination of the tenancy was denied. The Landlord elected to proceed with the compensation portions of the their application.

Compensation for Damage

6. The Landlord alleges that the Tenant has caused undue damage by smoking in the rental unit.
7. While the Landlord sought out-of-pocket expenses for additional out-of-pocket damages caused to the countertop, walls, baseboards, kitchen door, bathtub, fixtures, shower door and to remediate mold and calcium build-up allegedly caused by the Tenant, the Landlord did not lead any evidence with regards to any other damage besides the smoking and elected to proceed with the application for the out-of-pocket expenses associated with remediating discolouration and smoke damage to the surfaces of the rental unit allegedly caused by the Tenant's smoking.
8. The Landlord seeks out-of-pocket expenses of \$1,273.00, to remediate discolouration and smoking odours from the surfaces of the rental unit caused by the Tenant smoking in the rental unit contrary to their lease agreement.
9. It was undisputed that as per the lease, smoking was prohibited in the residential complex.
10. The Landlord also testified that the rental unit had been painted just before the Tenant took possession on or about January 1, 2022. There was no supporting evidence that the unit was painted prior to the Tenant moving in such as an invoice.

11. The Landlord entered into evidence photos of the walls and surfaces of the rental unit that appear to have yellowish discolouration allegedly caused by the Tenant's smoking in the rental unit.
12. The Landlord also testified that she had received a complaint from a resident who resides in the rental unit above the Tenant complaining of a smoke odour from the Tenant's rental unit. An email from the Landlord to the Tenant dated February 1, 2022, entered as evidence by the Landlord, states that "the new tenant above says the smoking from your unit is coming into his apartment and we did agree that it is a non-smoking building and that you would smoke outside..." The Tenant sent a response email stating "I have been smoking outside."
13. A complaint from another resident dated February 5, 2022, was entered into evidence complaining of smoke coming from the basement.
14. The complainants were not present to testify as to the origin of the smoke smell or that it was a result of the Tenant smoking in the rental unit.
15. The Landlord testified that she had not observed the Tenant smoking in the rental unit nor had she observed any evidence of the Tenant smoking in the rental unit such as cigarette butts or any ashtrays in the rental unit. While the Landlord testified she observed cigarette butts outside the Tenant's bedroom door, no photos of the alleged cigarette butts were entered as evidence.
16. The Tenant denies smoking in the rental unit and asserts that he did not allow any occupants or guests to smoke within the rental unit. The Tenant asserts that the yellowing and discolouration is likely a result of pre-existing smoke damage caused by a prior tenant.
17. While I am satisfied that there was yellow discolouration to the walls, as there was no evidence the unit was repainted prior to the Tenant moving in and based on the Tenant's testimony that he doesn't smoke in the unit, I am satisfied that the Tenant did not cause the damage.
18. 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. As a result, the application is dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

March 31, 2026
Date Issued

Christopher Lin
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.