



Order under Section 78(11) Residential Tenancies Act, 2006

Citation: Prestigious Place v Irish, 2026 ONLTB 27079

Date: 2026-04-01

File Number: LTB-L-102515-25-SA

In the matter of: 306, 226 JOGUES ST
SUDBURY ON P3C2K1

Between: Prestigious Place Landlord

And

Pierre Irish Tenant

Prestigious Place (the 'Landlord') applied for an order to terminate the tenancy and evict Pierre Irish (the 'Tenant') because the Tenant did not meet a condition specified in the order issued by the LTB on October 23, 2025 with respect to application LTB-L-049608-25.

The Landlord's application was resolved by order LTB-L-102515-25, issued on December 29, 2025. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-102515-25.

This motion was heard by videoconference on March 4, 2026.

The Landlord's legal representative, Deborah Shewman ('DS'), the Landlord's agent Ray St. Denis ('RS'), the Landlord's witness, Danielle Hoffman ('DH'), and the Tenant attended the hearing.

Determinations:

There was not a breach of the previous order:

1. The October 23, 2025 order of the LTB contains the following provision:

"From November 1, 2025 to October 30, 2026 the Tenant, another occupant of the rental unit, or someone the Tenant permitted in the residential complex, shall not smoke in the rental unit".

2. This provision was subject to section 78 of the *Residential Tenancies Act, 2006* (the 'Act').

3. On December 4, 2025, the Landlord filed an *ex parte* application claiming that the Tenant failed to comply with the condition described at paragraph 1 of the order on November 24, 2025.
4. On December 29, 2025 *ex parte* order LTB-L-102515-25 was issued, granting the Landlord's application, terminating the tenancy, and evicting the Tenant.
5. The Tenant then brought a motion to set aside order LTB-L-102515-25, claiming that he had not breached the October 23, 2025 order by smoking inside the rental unit.
6. The Tenant gave evidence at the hearing, and I found him to be a credible witness. His evidence was clear, cogent, and consistent.
7. The Tenant said that he has not smoked inside the rental unit since October 23, 2025, and no one else living with or visiting him has done so either. The Tenant said the whole building sort of smells like smoke, but he smokes outside. He said that his clothes might smell like smoke, but no one has smoked inside the unit during the relevant period.
8. The Tenant said he smokes on his balcony. He said that until about November 2025 he was only closing the screen door, but after that time, he has only smoked on his balcony with the door closed.
9. In his motion, the Tenant wrote that he had quit smoking entirely since January 1, 2026. He acknowledged at the hearing on cross-examination that he had started smoking again after he filed the motion. He is again trying to quit smoking.
10. On cross-examination, the Tenant also acknowledged that he had previously said he quit smoking in May 2025. He said he has tried quitting several times.
11. On cross-examination, the Tenant remained adamant that he had not smoked inside the rental unit during the relevant period. The Tenant had again quit smoking three days before the hearing, but also remained adamant that he would not smoke inside the unit moving forward even if he were to smoke again.
12. DH is another tenant in the building. Her unit is across the hall and a few doors down from the Tenant's unit. She said that she has made several complaints to the Landlord about the smell of smoke since November 1, 2025. She said that in late November 2025 the odour was getting pretty bad, and was entering her rental unit, not only the common area hallway.
13. DH entered as evidence a status history of her complaints to the Landlord (DOC-7173425, p. 36). Since October 23, 2025, DH complained to the Landlord about the odour of cigarette smoke in the common area hallway and/or in her unit on October 31, 2025, November 2, 2025, November 8, 2025, November 9, 2025, November 10, 2025, and November 16, 2025, according to this document.
14. The *ex parte* application was filed on December 4, 2025. The breach alleged in the application is based on an email from DH dated November 24, 2025. In that email, DH complains about the odour of cigarette smoke, and she wrote that the odour was being caused by the Tenant. To support this assertion, DH wrote that the odour is concentrated just outside the rental unit (see DOC-6925625). DH did not specifically speak to this email

or what she smelled or observed on November 24, 2025 during the hearing, though the email was submitted together with the Landlord's application.

15. In the status history of complaints referred to above, DH complained that the odour was coming from the rental unit numerous times. In her November 16, 2025 complaint, although she requests that the Landlord "... do something about apartment 306", she also she also wrote: "Where is that coming from? Below me, probably if it's not my neighbour". This suggests that even if DH believes the odour is coming from the Tenant's unit, it could be coming from somewhere else.
16. There was no evidence that the Landlord engaged in any kind of investigation of its own to determine the source of the odour complained of by DH. The Landlord's case relies entirely on DH's evidence.
17. I accept the Tenant's evidence that he did not smoke inside the rental unit during the relevant period. The Tenant is the only person with direct knowledge of whether he smoked inside the unit during the relevant time, and as stated above, he was a credible witness.
18. I accept that DH is being impacted by the odour of cigarette smoke, but in determining whether the Tenant breached the condition in the October 23, 2025 order as alleged in the application, I must consider whether the Tenant breached that condition on November 24, 2025. The Tenant specifically and unequivocally denied smoking inside the unit after October 26, 2025, and that he kept his balcony door closed when smoking on the balcony after November 1, 2025. The Landlord did not present any specific evidence about the allegation from November 24, 2025.
19. It is plausible that the odour that is impacting DH is emanating from a different rental unit. Given that there was no specific evidence from DH or any other Landlord witness relative to November 24, 2025, and the absence of any evidence of any investigation engaged in by the Landlord, I prefer the Tenant's evidence over DH's general evidence that the odour is generally concentrated outside the rental unit, relative to my determination as to whether the Tenant breached the condition in the October 23, 2025 order on November 24, 2025, as alleged in the application.
20. For the forgoing reasons, I find that the Tenant did not breach the October 26, 2025 order as alleged by the Landlord in the application.
21. The motion to set aside order LTB-L-102515-25 is granted. The order is set aside and cannot be enforced. The October 26, 2025 order remains in force.

It is ordered that:

1. The motion to set aside Order LTB-L-102515-25, issued on December 29, 2025, is granted.
2. Order LTB-L-102515-25, issued on December 29, 2025, is set aside and cannot be enforced.
3. Order LTB-L-049608-25 is unchanged and remains in force.

April 1, 2026
Date Issued

Mark Melchers
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.