



Order under Section 69 Residential Tenancies Act, 2006

Citation: Sabatino v Tokarz, 2026 ONLTB 30375

Date: 2026-04-15

File Number: LTB-L-013466-26

In the matter of: Basement Unit, 47 PAISLEY AVE S
HAMILTON ON L8S1V2

Between: Lisa Sabatino Landlord

And

John Tokarz Tenant

Lisa Sabatino (the 'Landlord') applied for an order to terminate the tenancy and evict John Tokarz (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 March 31, 2026.

The Landlord, the Landlord's Representative Arashdeep Grewal, the Landlord's witness Cameron Newbigging, the Landlord's witness Trish Roy and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application. However, the tenancy between the Landlord and the Tenant shall continue if the Tenant meets the conditions set out below in this order.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On January 18, 2026, the Landlord gave the Tenant an N5 notice of termination. The notice of termination contains, in part, the following allegations:

November 11, 2025, through to January 3, 2026 inclusive, the Landlord received almost daily complaints from the upper tenants, of the smell and smoke of marijuana coming from your unit, coming into their unit, affecting the reasonable enjoyment of their unit.

Landlord's Evidence

4. The Landlord's witness Cameron Newbigging (CN), a tenant from the upper unit, testified that he, his wife and his 2-year-old son moved into the upper unit of the residential complex in September 2025. He further testified that their lease specified it was a non-smoking unit.
5. CN testified that he sent his first email to the Landlord November 10, 2025, to complain about the marijuana smoke coming into their unit through the vents.
6. CN testified that despite their complaints and the Landlord reaching out to the Tenant, the smell and smoke continued to get worse.
7. CN testified that 2 air purifiers were put into their unit, and this still did not help. Logs from the air purifier noting the bad air quality along with corresponding logs by CN were submitted as evidence.
8. CN testified that due to the daily smoke and smell from the Tenant's marijuana use, he and his family had to leave the unit and stay with other family members awaiting a decision from the Board.
9. CN testified that the Tenant continued to smoke marijuana in the unit throughout January 18 to January 25, 2026, which was supported by the logs which were submitted as evidence.
10. Under cross-examination, CN testified that there was also the smell of sewage coming from the basement at one point, but the Landlord called a plumber and the issue was dealt with.
11. The Landlord's witness Trish Roy (TR), CN's wife, testified that the marijuana smoke from the Tenant's unit has had a negative effect on her asthma. A copy of a letter from her doctor confirming this was submitted as evidence.
12. The Landlord testified to the email complaints from the upper tenants starting November 10, 2025, and her calls and texts to the Tenant asking him to stop smoking in the unit, and the Tenant failing to respond to any of her requests.
13. The Landlord testified that she also attended the residential complex and could smell the excessive and strong odor of marijuana throughout the entire complex, but it was the strongest in the basement, coming from the Tenant's unit.
14. The Landlord testified that the furnace is in the Tenant's unit.
15. The Landlord testified that she entered the Tenant's unit for maintenance and there was the strong odor of marijuana, the walls and fixtures were yellow, and the condition of the

furnace filters reflected the smoke in the unit. Declarations from a repairman and a contractor supporting her observations and photos were submitted as evidence.

16. The Landlord testified that she attended the residential complex during the voiding period and continued to smell marijuana coming from the Tenant's unit.
17. The Landlord testified that the Tenant was never authorized to smoke in the unit.
18. Under cross-examination, the Landlord testified that they had been friends for 15 years, she knew that he smoked marijuana, but she denied that that the Tenant's unit was the designated smoking unit when she lived in the upper unit and that she, her boyfriend and her children would smoke in the unit.

Tenant's Evidence

19. The Tenant testified that he has smoked marijuana in the unit since he moved in 10 years ago and the Landlord's boyfriend and her kids also smoked in his unit.
20. The Tenant testified that there were never any issues with his smoking in the unit until the new tenants moved in upstairs.
21. The Tenant testified that he does not have a medical card but he uses marijuana for medical reasons including pain, anxiety and asthma.
22. The Tenant testified that it is sewer smell that creates the bad air quality reading on the air purifier because the Landlord has failed to address the issue.
23. The Tenant testified that he tried to go outside to smoke but due to a lack of a railing, poor lighting and his health conditions, he is unable to go out and additionally if it is too cold outside, it prevents him from being able to smoke outside.
24. The Tenant testified that because of his health issues he is no longer able to assist the Landlord with upkeep of the residential complex and he feels this application is in retaliation.

Analysis

25. It was uncontested that the Tenant continued to smoke in the unit after being served the N5 notice. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
26. Although the Tenant believes he has the right to smoke in the unit because he always has and due to his disabilities, the Landlord also has a responsibility to the other tenants.
27. In *Hassan v. Niagara Housing Authority*, [2002] O.J. No. 5650, the Division Court affirmed that a landlord has a positive duty to address the substantial interference with the reasonable enjoyment of a tenant by another tenant. In that decision, the Court stated:

It is not that the other tenant's actions are imputed to the landlord, but rather, the landlord's legal responsibility to provide the tenant with quiet enjoyment that gives

rise to the responsibility on the landlord to take reasonable steps to correct the intrusion of the neighbouring tenant on the tenant's right to quiet enjoyment.

28. The upper Tenants both testified to the negative effect the smoke and odor of the marijuana had on them and their 2 year old son and I take judicial notice of the fact that second-hand smoke from marijuana may create a health hazard.

Relief from Eviction

29. The Landlord is seeking a standard order terminating the tenancy, with an expedited eviction date.
30. The Tenant is seeking to preserve his tenancy and submitted that he cannot afford alternative housing and will end up homeless if evicted.
31. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant shall not smoke marijuana in his rental unit or anywhere in the residential complex and shall not permit any other occupant of the rental unit or person permitted in the unit to do the same.
3. If the Tenant chooses to smoke marijuana outside, he must be at least 30 feet from any door or window of the residential complex.
4. If the Tenant fails to comply with the conditions set out in paragraphs 2 and 3 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
5. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing on or before July 31, 2026, the Tenant will start to owe interest. This will be simple interest calculated from August 1, 2026, at 4.00% annually on the balance outstanding.

April 15, 2026
Date Issued

Brenda Mercer
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.