



**Order under Section 69  
Residential Tenancies Act, 2006**

**Citation:** Cloutier v Schwab, 2024 ONLTB 23157

**Date:** 2024-04-02

**File Number:** LTB-L-002343-23

**In the matter of:** BASEMENT/#4, 10 DALLYN AVE KAPUSKASING  
ON P5N1S5

**Between:**

Guy Cloutier Landlord

**And**

Stephen Schwab

Tenant

Guy Cloutier (the 'Landlord') applied for an order to terminate the tenancy and evict Stephen Schwab (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.

This application was heard by videoconference on March 13, 2024.

Only the Landlord and the Landlord's Legal Representative, Jeremy Wainwright attended the hearing.

As of 9:54 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.

**Preliminary Issue:**

Do the Notices of Termination Identify the Rental Unit?

1. Section 43(1)(a) of the *Residential Tenancies Act, 2006*, S.O. 2006, c.17 ('Act') states:

43 (1) Where this Act permits a landlord or tenant to give a notice of termination, the notice shall be in a form approved by the Board and shall,

(a) identify the rental unit for which the notice is given;
2. In this case, the residential complex is a house located at 10 Dallyn Ave. Kapuskasing ON P5N 1S5 and the rental unit is the basement apartment in the house. There are three other units in the house, one of which the Landlord and his spouse reside in.
3. Both N5 notices have "10 Dallyn Ave. Kapuskasing ON P5N 1S5" identified at the top of each form under the heading "Address of the Rental Unit". Although the rental unit description of "*Basement/#4*" does not appear in the heading, the "Details of the Events" narrative portion of the form states that the Tenant has been smoking "in the basement rental unit".
4. We are satisfied that the additional information in the narrative portions of the forms sufficiently identifies the rental unit and that the notices are compliant with s. 43(1)(a).

**Determinations:**

5. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 13, 2024 6. The Tenant was in possession of the rental unit on the date the application was filed.
7. The Landlord's L2 application is based on two N5 notices.
8. On October 12, 2022, the Landlord served the Tenant with a voidable N5 Notice of Termination under section 64 of the Act for substantially interfering with the reasonable enjoyment of the residential complex and/or the Landlord's lawful rights, privileges or interests due to tobacco and marijuana smoke emanating from the rental unit (N5 notice).
9. The N5 notice of termination stated a termination date of November 4, 2022, and alleged the following:

- a) The Tenant has been smoking tobacco and marijuana in the basement rental unit since on or about November 2020 to the present. The smoke from the Tenant's rental unit travels into the main floor unit where the Landlord resides and into the upstairs units, where other tenants reside. This substantially interferes with the rights and enjoyment of the residential complex by the Landlord and other tenants.
- b) In August 2022, the upstairs tenant ended her tenancy due to the smell of smoke in her rental unit which negatively impacted her and her children.
- c) The Tenant has been warned on several occasions to stop smoking in his rental unit.

10. Subsection 64(1) of the Act states:

A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

11. Subsection 64(3) states that the notice of termination under subsection (1) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission.

12. The Landlord testified that the Tenant did not void the N5 notice.

13. Pursuant to subsection 68(1)(b) of the Act, the Landlord served a second nonvoidable N5 Notice of Termination (2<sup>nd</sup> N5 Notice).

14. Subsection 68(1) of the Act states that a:

A landlord may give a tenant notice of termination of the tenancy if,

- (a) a notice of termination was given to the tenant under section 62, 64 or 67; and
- (b) more than seven days but less than six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct occurs or a situation arises that constitutes grounds for a notice of termination under section 60, 61, 62, 64 or 67, other than an activity, conduct or a situation that is described in subsection 61 (1) and that involves an illegal act, trade, business or occupation described in clause 61 (2) (a). 2006, c. 17, s. 68 (1); 2017, c. 13, s. 12.

15. This section entitles the Landlord to serve a non-voidable N5 if there is another incident that occurs more than seven days but less than six months after the Landlord served the first N5 Notice.

16. The 2<sup>nd</sup> N5 Notice, which was served on November 30, 2022, alleged that the Tenant had interfered with the reasonable enjoyment of the Landlord and his family and other tenants by allowing the smell of tobacco and marijuana smoke to emanate from his rental unit and that the Tenant had been warned on several occasions and served with previous termination notices. The 2<sup>nd</sup> N5 Notice provided a termination date of December 15, 2022.
17. The Landlord testified at the hearing that the Tenant resides in the basement rental unit of a four-unit residential complex. The main floor unit is occupied by the Landlord and his spouse, and the other two units are occupied by other tenants. The Landlord testified that tobacco and marijuana smoke emanating from the Tenant's rental unit and can be smelled in the other units of the residential complex. The Landlord testified that while there is no written lease agreement the Tenant had been advised verbally at the commencement of his tenancy on or about November 2020 that the residential complex was a non-smoking building and smoking was prohibited in the rental units. The Landlord further testified and provided documentary evidence that he had received several complaints from other tenants in the building that smoke is emanating from the Tenant's rental unit, and he has personally confirmed that there has been smoke emanating  
  
from the Tenant's rental unit. The smoke emanating from the Tenant's rental unit has also caused another tenant and her children to terminate their tenancy early.
18. The Landlord testified that the Tenant has been spoken to multiple times regarding not smoking in his rental unit, and while the Tenant has apologized and ceased smoking for a day or two, the smoking recommences shortly thereafter, and no change has occurred in the Tenant's smoking or the level of smoke emanating from the rental unit.
19. The Landlord also testified other than himself no one else in the residential complex smoked. The Landlord also testified he never smokes in the residential complex as he and his spouse act as caregivers to their granddaughter who is asthmatic and uses various steroidal inhalers, which she has had to use more regularly due to the smoke emanating from the Tenant's rental unit.
20. The Landlord testified that given the residential complex is a house and all the residential complex's bathrooms air returns and vents are interconnected it is difficult to ensure the reasonable enjoyment of the other tenants in the building and attempting to resolve the numerous complaints received due to the excessive smoke emanating from the Tenant's rental unit.
21. On the basis of the uncontested evidence before us, we are satisfied on a balance of probabilities that the Tenant's smoking has substantially interfered with the reasonable

enjoyment of other tenants in the building. I accept the evidence of the Landlord that smoke frequently emanates from the Tenant's rental unit and enters both the Landlord's unit and other tenants' rental units. The frequency and impact of the Tenant's smoking is well established by the testimony of the Landlord and the complaints to the Landlord. The Tenant has been advised by the Landlord to cease smoking in his residential unit to no avail. The N5 notices' did not cause the smoke to cease emanating from the rental unit.

22. A tenant is entitled to quiet enjoyment of their rented premises, which includes the right not to be regularly subjected to second-hand smoke. When a neighbouring tenant interferes with the right of quiet enjoyment, a tenant has no recourse against the neighbouring tenant but must rely on the landlord to restore quiet enjoyment. In the case of *Hassan v Niagara Housing Authority*, 2001 CarswellOnt 4890, the Divisional Court held that where a landlord receives a complaint about another tenant, a landlord has a positive obligation to investigate and to take reasonable steps, in a timely manner, to resolve the problem. Reasonable steps may include commencing an eviction proceeding against the offending tenant. A landlord's failure to take adequate steps against the offending tenant may leave them vulnerable to applications filed by the effected tenants.
23. In the case of *North Avenue Road Corporation v. Tom Travares*, 2015 ONSC 6986 (Div. Ct.), the Divisional Court dealt with a very similar case regarding smoking, in which the Court found that the implications of smoking within an apartment building where other tenants are impacted is a matter of public interest. The Court found the landlord has a lawful interest in protecting itself against future claims by tenants and future tenants based on a failure to comply with the Act. Further the Court found that "the landlord has an obligation to take reasonable actions against a tenant that denies a neighbouring tenant enjoyment of the premises. We are of the view; knowledge of the existing smoking problem simply sets the landlord at legal risk of having an application brought for failing to comply with section 20 of the Act."
24. On the evidence before the Board, we are satisfied on the balance of probabilities, that the Tenant's smoking has substantially interfered with the reasonable enjoyment and lawful right, privilege, or interest of the Landlord and other tenants. The tobacco and marijuana smoke emanating from the Tenant's residential unit puts the Landlord at legal risk from other tenants in the complex and substantially interferes with other tenants.
25. The Landlord's Legal Representative requested a standard order terminating the tenancy between the Landlord and Tenant. We have considered all the disclosed circumstances in accordance with subsection 83 of the Act, specifically that the Landlord is not aware of any circumstances of the Tenant to warrant a finding that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

26. As the Tenant did not attend and no other circumstances were presented to us, we find it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
27. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
28. There is no last month's rent deposit.
29. The order contains all the reasons for the decisions within the order. No other reasons will be issued.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 13, 2024.
2. If the unit is not vacated on or before April 13, 2024, then starting April 14, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after April 14, 2024.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before April 13, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 14, 2024, at 7.00% annually on the balance outstanding.

**April 2, 2024**  
**Date Issued**

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**Panagiotis P. Roupas**  
Member, Landlord and Tenant Board

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**Richard Ferriss**  
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on October 14, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.