



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

Citation: 1799470 Ontario Inc. v Melissa Foster, 2023 ONLTB 33803

Date: 2023-05-08

File Number: LTB-L-026821-22

In the matter of: 11, 415 Churchill Rd E
Prescott ON K0E1T0

Between: 1799470 Ontario Inc. Landlord

And

Melissa Foster Tenant

1799470 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Melissa Foster (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 April 19, 2023. The Landlord's agent, Dharminder Gill, attended the hearing; however, as of 2:22 pm 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:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. However, the Tenant has been granted relief from eviction on condition that the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex, does not smoke or vape in the unit or in the residential complex for the 12-month period from May 15, 2023 to May 15, 2024.
2. On April 11, 2022 the Landlord served the Tenant with an N5 Notice to end the tenancy for substantial interference with a date of termination of May 2, 2022. I am satisfied that

the N5 was properly served and complied with s. 64 of the *Residential Tenancies Act, 2006* (the 'Act').

3. The N5 alleges that on February 14, 2022 the Tenant was smoking inside the residential complex at the main entrance, and on April 9, 2022 the Tenant's guest was smoking or vaping outside the unit door in the hallway.
4. In accordance with section 64(3) of the Act, the Tenant had an opportunity to void the N5 notice within 7 days from being served, from April 12, 2022 to April 18, 2022, by the Tenant, another occupant of the rental unit, or someone the Tenant permitted in the residential complex, refraining from smoking or vaping in the unit or the residential complex.
5. On May 6, 2022 the Landlord served the Tenant with a second, non-voidable N5 Notice to end the tenancy for substantial interference, with a termination date of May 22, 2022. I am satisfied that the second N5 was properly served and complies with s. 68 of the Act. The Landlord filed an L2 application with the Board on May 11, 2022, in compliance with s. 69(1) and s. 69(2) of the Act.
6. The second N5 alleges that on April 24, 2022, May 4, 2022, and on May 6, 2022 the Tenant was smoking in the main entrance of the residential complex.

Landlord's Evidence

7. The Landlord's agent testified that on February 14, 2022 the Tenant was smoking inside the residential complex at the main entrance, as captured on video by the cameras in the residential complex. The agent testified further that on April 9, 2022 the Tenant's guest was smoking or vaping outside the unit door in the hallway, as captured on video by the cameras in the residential complex. The Landlord submitted both videos to the Board.
8. The Landlord's agent stated that he was not aware of any incidents, reported by other tenants or recorded by video cameras, of the Tenant or her visitors smoking or vaping in her unit or the residential complex during the void period for the first N5.
9. The Landlord's agent testified further that on April 24, 2022, May 4, 2022, and on May 6, 2022 the Tenant was smoking in the main entrance of the residential complex, as captured on video by the cameras in the residential complex. The Landlord submitted three videos to the Board of the Tenant smoking in the main entrance of the residential complex on these three dates.
10. The Landlord's agent testified that he never received complaints from any other tenants regarding the Tenant's smoking; however, he asserted that prospective tenants viewing the residential complex expect a smoke-free building, in accordance with the *Smoke Free Ontario Act*, and the strong odour of smoke as a result of the Tenant's smoking in the main lobby detracts prospective tenants from choosing to live in the building, and this substantially interferes with the Landlord's lawful right, privilege and interest.

11. The Landlord's agent stated that there are no smoking signs posted throughout the residential complex, and he relayed his concerns to the Tenant on multiple occasions regarding her smoking; however, she just shrugged her shoulders and was dismissive of his comments. The agent stated that the Landlord is required to remain compliant with the *Smoke Free Ontario Act*, but with the Tenant smoking, the Landlord is unable to comply.
12. The Landlord's agent remarked that since this application was filed, the Tenant has been captured on video camera smoking near the west main lobby entrance of the residential complex on May 8, 2022, September 9, 2022, and on October 13, 2022. The Landlord submitted three videos of the Tenant smoking in the residential complex on these three dates.

Analysis

13. On the basis of the Landlord's uncontested evidence, I am satisfied that the Tenant or her visitors did not smoke or vape in her unit or the residential complex during the void period for the first N5 from April 12, 2022 to April 18, 2022. I therefore find that the Tenant voided the first N5 notice.
14. Only the incidents identified in the second N5 notice can be considered as grounds for termination of the tenancy.
15. On the basis of the Landlord's uncontested evidence, I am satisfied that the Tenant smoked in the main entrance area of the residential complex on April 24, 2022, May 4, 2022, and on May 6, 2022. I am satisfied that this smoking did not substantially interfere with other tenants' reasonable enjoyment of the residential complex; however, I find that the Tenant's smoking on these dates substantially interfered with the Landlord's lawful right, privilege or interest to maintain a marketable and desirable smoke free residential complex.
16. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Relief from Eviction

17. 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.
18. I accept that since this application was filed, the Tenant smoked near the west main lobby entrance of the residential complex on May 8, 2022, September 9, 2022, and on October

13, 2022, continuing to substantially interfere with the Landlord's lawful right, privilege or interest. I also accept that the Landlord's agent was not aware of any circumstances that should be considered in a determination of whether to provide the Tenant with eviction relief, nor was the Tenant or her representative present at the hearing to provide submissions with respect to the Tenant's relief from eviction.

19. However, without a smoking incident since October 13, 2022, I find it reasonable and appropriate to provide the Tenant with an opportunity to preserve her tenancy, while minimizing prejudice to the Landlord, by granting the Tenant with relief from eviction subject to the conditions set out in this order. I am satisfied that with the imposition of these conditions the Tenant's conditional relief from eviction will not be unfair to the Landlord.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. From May 15, 2023 to May 15, 2024 the Tenant, another occupant of the rental unit, or someone the Tenant permitted in the residential complex, shall not smoke or vape in the rental unit or the residential complex.
3. If the Tenant fails to comply with the conditions set out in paragraph 2 of this order, the Landlord may apply under s. 78 of 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.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing this application.
5. If the Tenant does not pay the Landlord the full amount owing on or before May 19, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 20, 2023 at 6.00% annually on the balance outstanding.

May 8, 2023

Date Issued

Frank Ebner

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.