



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

**Citation:** Pickett v Denisson, 2023 ONLTB 23884

**Date:** 2023-03-13

**File Number:** LTB-L-072970-22

**In the matter of:** 1, 2486 Rivard Avenue  
Windsor ON N8T2H2

**Between:** Barbara Pickett Landlord

**And**

James Denisson Tenant

Barbara Pickett (the 'Landlord') applied for an order to terminate the tenancy and evict James Denisson (the 'Tenant') because the Tenant did not comply with a condition in Board consent order LTB-L-000627-21, issued on June 15, 2022.

This application was heard by videoconference on January 30, 2023.

The Landlord, the Landlord's legal representative Justin Brodie Timms-Fryer, the Landlord's witness Joshua Hilliard ('JH'), the Tenant and the Tenant's witness Chris Dennison ('CD') attended and participated in the hearing.

**Determinations:**

1. Although the Tenant pays rent to the Landlord, he does not occupy the rental unit. The Tenant testified that he and his household reside at a different address. The Tenant's witness CD is the Tenant's son. CD resides at the rental unit. CD is an occupant of the rental unit. The Board previously arrived at this conclusion in Board order LTB-L-00062721, issued on June 15, 2022. Neither the Tenant, nor any other person affected by the order, requested a review of the June 15, 2022 order.
2. Since the Tenant conceded that he does not reside at the rental unit or residential complex, the Tenant's evidence that he believes no person has smoked inside the rental unit is not reliable. The Tenant does not have first-hand knowledge of the occupants'

activities in the rental unit. Moreover, when shown a video of a person inside the rental unit smoking, the Tenant gave his opinion that the activity occurred outdoors, because the person smoking was holding the cigarette outside the window. The Tenant's witness CD, by contrast, agreed that the Landlord's evidence shows CD's girlfriend smoking a cigarette inside the rental unit. CD agreed that holding a cigarette outside a window does not constitute smoking outdoors.

3. In addition to CD's concession, both the Landlord and the Landlord's witness JH testified that they are able to smell second-hand smoke in the basement of the residential complex, where the rental unit is located. Both the Landlord and JH described the second-hand smoke as coming from the Tenant's rental unit. They testified that the tenant in the other basement rental unit does not smoke because of a lung condition.
4. Based on the evidence introduced at the hearing, I find that the Landlord proved that a guest smoked cigarettes inside the rental unit on September 18, 2022, and on other occasions, in breach of the June 15, 2022 Board consent order.
5. Both the Tenant and CD gave evidence of their belief that neither individual can afford a rental unit for CD to occupy. The Tenant is required to pay the Landlord \$1,100.00 a month as rent. CD relies on his father the Tenant to pay the rent.
6. The Landlord testified that she has received complaints from other residents about ongoing smoking inside the rental unit for approximately six years. The Landlord further testified that two tenants had terminated their tenancies and vacated the residential complex because of the amount of second-hand smoke from the rental unit.
7. Pursuant to subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), I have considered all the parties' evidence and submissions concerning their circumstances. I find that it is appropriate to terminate the tenancy and evict the Tenant, occupant CD and any other occupant from the rental unit. The evidence – including CD's own testimony – shows that CD cannot ensure that his girlfriend will refrain from smoking inside the rental unit. CD described his efforts to discuss the problem with his girlfriend, but conceded that he is not able to stop the activity. Although the Tenant asserted that smoking with one's hand outside a window is not tantamount to smoking indoors, evidence of the continuing amount of second-hand smoke in the residential complex's basement shows that guests or occupants have breached the June 15, 2022 conditional consent Board order.
8. I am, however, mindful of the Tenant and CD's evidence that they may be unable to afford a rental unit at a comparable monthly rental. Neither the Tenant, nor CD, gave reliable evidence of their efforts to find new accommodation, or of the rental market in Windsor and surrounding areas. The Landlord did not oppose postponing enforcement of the eviction until March 31, 2023.
9. I conclude from the parties' evidence and submissions that it is not unfair to postpone enforcing the eviction date to April 30, 2023, pursuant to subsection 83(1)(b) of the Act. Although the Landlord's legal representative submitted that a March 31, 2023 enforcement date is appropriate, I am mindful that CD has occupied the rental unit for at least six years and will likely require time to find new accommodations with his father, the Tenant's, help.

Without reliable evidence from either the Tenant or CD of local rental market conditions, I find that it is not appropriate to delay enforcing the eviction beyond April 30, 2023.

10. There is no last month's rent deposit.

**It is ordered that:**

1. The tenancy between the Landlord and Tenant is terminated. The Tenant and occupant(s) must move out of the rental unit on or before April 30, 2023.
2. If the rental unit is not vacated on or before April 30, 2023, then starting May 1, 2023, the Co-op 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 May 1, 2023.

**March 6, 2023**

**Date Issued**

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Harry Cho

Vice Chair, 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 November 1, 2023 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.

