



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

File Number: LTB-L-011696-22

In the matter of: 203 – 1 HOMEWOOD AVENUE
TORONTO, ON M4Y 2J8

Between: North 44 Properties Landlord

and

Jonathan Smith Tenant

2023 CanLII 107571 (ON LTB)

North 44 Properties (the 'Landlord') applied for an order to terminate the tenancy and evict Jonathan Smith (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 June 2, 2022.

Manuele Mizzi appeared for the Landlord, accompanied by the Landlord’s legal representative Natasha Mizzi. As of 10:17 am, 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.

Sylvia Kanary and Sandra MacLean appeared as witnesses for the Landlord.

It is determined that:

1. This is an application based on N5 notices of termination given to the Tenant alleging the Tenant has on multiple occasions smoked in the rental unit in contravention of the terms of the tenancy agreement which states that the building is a non-smoking building.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application. However, I find it would not be unfair to grant relief from eviction subject to the condition(s) set out in this order.

N5 Notice of Termination - Substantial interference

4. On October 18, 2021, the Landlord gave the Tenant a first, voidable N5 notice of termination by leaving it in the Tenant's mailbox. The notice lists several dates between May 11, 2021 and October 15, 2021 where a smell coming from the unit indicates the Tenant is smoking cannabis.
5. Section 64(3) of the *Residential Tenancies Act 2006*, (the 'Act') provides that the type of N5 Notice served by the Landlord is void if the Tenants, within seven (7) days after receiving the notice stops the activity or corrects the conduct/behaviour. In this case the N5 was served on October 18, 2021, which means the seven (7) day voiding period ran from October 19 to 25, 2021. The Landlord gave no evidence of behaviour during this voiding period and I therefore find the Tenant voided the notice.
6. On November 22, 2021, the Landlord gave the Tenant a second N5 notice of termination by leaving the notice in the Tenant's mailbox. The notice of termination alleges that the smell of cannabis smoke was coming from the Tenant's unit on October 28, 2021 and that on November 20, 2021 a guest of the Tenant attended the residential complex without wearing a face covering.

Marijuana Smoke

7. It was the Landlord's uncontested evidence that the building has a non-smoking policy of which the Tenant is aware, and that the Landlord has received numerous complaints from other Tenants regarding the smell of marijuana smoke. The Landlord did not enter the lease agreement into evidence.
8. Sylvia Kanary (SK) appeared as a witness for the Landlord. SK is the property manager and gave evidence of having received complaints from other tenants about cannabis smoke and guests without masks.
9. Sandra Maclean (SM) also appeared as a witness for the Landlord. SM lives in the unit across the hall from the Tenant. She gave evidence that frequent incidents of cannabis smoke traveling from the Tenant's unit to her own, and stated it has a negative effect on her and her dog.
10. For all of the above, I find that the Tenant has smoked in the unit and that this conduct has substantially interfered with the Landlord's and the other tenants' reasonable enjoyment of the residential complex.

Failure to Wear a Mask or Other Face Covering

11. The Landlord further alleges that on November 20, 2021 a guest of the Tenant attended the unit without wearing a face covering and was dismissive when confronted about this. At the hearing, both SK and SM gave evidence of several guests attending without masks.
12. In a case such as this the onus rests with the Landlord to prove, on a balance of probabilities, that the conduct of the Tenant and or a guest of the Tenant(s) substantially

interferes with a lawful right, privilege or interest of the Landlord and the other tenant(s). I do not find the Landlord has established the behaviour constitutes substantial interference to a degree justifying eviction.

Relief from Eviction

13. Eviction is a remedy of last resort. After having considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, I find that it would not be unfair to grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

It is ordered that:

1. Effectively immediately and for the duration of the tenancy, the Tenant shall abide by the building's no-smoking policy. Specifically, the Tenant shall not smoke in the rental unit or any of the common areas of the residential complex.
2. If the Tenant fails to comply with paragraph (1) above, the Landlord may apply to the Board under section 78 of the Act, within 30 days of the breach without notice to the Tenant for an order to terminate the tenancy and evict the Tenant.

January 4, 2023

Date Issued

Amber Neumann

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.