



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

Citation: Maier v Taylor, 2022 ONLTB 11061

Date: 2022-11-14

File Number: LTB-L-005671-22

In the matter of: D, 176 CHESTNUT ST
ST THOMAS ON N5R2B4

Between: Stephen Maier Landlord

And

Cody Taylor Tenant

2022 ONLTB 11061 (CanLII)

Stephen Maier (the 'Landlord') applied for an order to terminate the tenancy and evict Cody Taylor (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 October 31, 2022, at 9:00 A.M.

The Landlord, the Landlord's Legal Representative, Ms. Susana Pereira, and the Tenants attended the hearing.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy and/or the claim for compensation in the application. Therefore, the application regarding cannabis smoking and noise from pipes are dismissed, and the tenancy shall continue with conditions regarding the Tenants' dog at the rental complex.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. The rental complex consists of 4-rental townhomes.

N5 Notice of Termination-Substantial interference

On December 16, 2021, the Landlord gave the Tenant an N5 notice of termination deemed served on December 16, 2021, with a termination date of January 6, 2022. The notice of termination contains the following allegations:

- Consistent smoking of cannabis in the rental complex, during the period from July 28, 2021 to August 8, 2021. This issue persisted for the fall period leading up to the issuance of the N5 notice, and persisted into 2022.
 - Dogs were permitted off-leash, and frequently defecated on the property at the rental complex, which was not attended to by the Tenants.
 - Noise coming from water pipes emanating from the Tenants' rental unit.
4. The Landlord's witness, Ms. Danielle Meyer, a neighbouring resident in Unit D, testified at some length regarding the ongoing challenges related to the issues referenced in the N5 notice, and relations between the Tenant respondents and herself.
 5. The Landlord's witness documented evidence and testified related to the alleged persistent use of cannabis, and the behavioural challenges with the Tenants' dogs. The Landlord's witness also testified about the noise emanating from water pipes in the basement when in use, from the Tenants' rental unit.
 6. The Landlord's Legal Representative submitted evidence to the Board regarding these assertions and also focussed on the 7-day voiding period in the N5 notice, in which it was alleged the Tenants did not correct the behaviour.
 7. The Tenants testified that while they may not have stopped all of the alleged conduct or activity within the seven-day voiding period after receiving the N5 notice of termination, they rebutted the Landlord witness's testimony, noting in particular, that the alleged times of many of the incidents occurred after hours when the Tenants were asleep.
 8. Furthermore, the Tenants' witness, Mr. Hunter Chapple, testified that as a frequent visitor to the rental complex, he has personally witnessed the children of the Landlord's witness frequently smoking cannabis in the yard of the Landlord's witness. He asserted that this frequent conduct by the children, has very likely contributed to the Landlord witness's concerns regarding cannabis consumption.
 9. I find the Tenants' testimony made evident the fact that her work obligations, and responsibilities during this period, along with her family responsibilities, appeared very credible. The Tenants' testimony that it was uncontested that the dog behaviour has been rectified over the past 5-months, was also quite convincing. While the Tenants may not have met the 7-day voiding test entirely, I find the Tenants did not entirely breach the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act). There was no corroborative evidence related to lease conditions prohibiting smoking in and around the rental complex, and the fact that there were also others smoking cannabis, certainly contributed to the issue.
 10. Additionally, I must give consideration to the allegations in the context of the witness testimony from both parties, and on the balance of probabilities, I find the Tenant's testimony quite credible that she and her co-Tenant (Daughter) took steps to stop smoking in the rental unit effective the fall of 2021, after having received previously defective N5 notices from the Landlord, and limited any smoking to the exterior of the rental complex only since then. The Landlord's witness also testified that this conduct has ceased in

recent months, and is herself, the subject of an N5 notice from the Landlord which is pending before the Board.

11. Finally, it should be noted that the smoking of cannabis, is not an illegal act, and therefore, the smoking of cannabis allegations in the application must be dismissed.
12. Regarding the dogs' activities on the rental property, the Tenant testified that one of the two dogs died in February 2022, and since that time the Tenants have been actively implementing measures to avoid any dog misconduct in the yard of the rental complex, and consciously leash the dog whenever outside.
13. It was uncontested by both parties that for the past 5-months there have been no other incidents involving the dog. Therefore, a condition regarding the conduct of the dog should provide some reassurance to the neighbouring tenant, and will be ordered.
14. Regarding noise coming from water pipes in the basement, I find there was inadequate evidence that could attribute this problem to the Tenants in this matter, and that it should be something the Landlord's witness may wish to pursue a T6 application with the Board.

It is ordered that:

1. The matters regarding the smoking of cannabis, and allegations of noise from pipes are dismissed.
2. The tenancy between the Landlord and the Tenants shall continue if the Tenants meet the conditions set out below:
 - The Tenants shall not permit their dog outside in the yard unleashed, and must cleanup any and all feces from their dog at the rental complex on a daily basis, for a 6-month period, commencing November 2022 to April 30, 2023.
3. If the Tenants fail to comply with the conditions set out in paragraph 2 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.

November 14, 2022
Date Issued

 Steven Mastoras
 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.