



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

**Citation:** Gonzalez v Leaf, 2022 ONLTB 10447

**Date:** 2022-11-09

**File Number:** LTB-L-025197-22

**In the matter of:** Basement, 56 TRUDEAU DR  
WOODBIDGE ON L4H0T7

**Between:** Gerardo Gonzalez, Paolina Spremulli Landlord

**And**

Michael Leaf, Vanessa Carvalho Tenants

Gerardo Gonzalez, Paolina Spremulli (the 'Landlord') applied for an order to terminate the tenancy and evict Michael Leaf, Vanessa Carvalho (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or a person the Tenants permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the building has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord in a building that has three or fewer residential units and the Landlord resides in the building.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on August 22, 2022.

The Landlords and the Tenants attended the hearing. The Landlord was represented by R. Gibbons, a licensed paralegal.

At the conclusion of the hearing I asked the parties for written submission as there was insufficient time for thorough oral submissions. The Landlord provided written submissions on August 29, 2022. The Tenants' submissions were due on September 5, 2022. On September 6, 2022 the Tenants requested an extension of time because of a delay in accessing the hearing recording. The Landlord opposed the extension because the expectation was that both parties would make submissions without the benefit of the hearing recording. The Tenant made a second request to extend time to make submissions on the ground that they had retained a paralegal for this purpose. On October 6, 2022, the Board received the Tenants' submissions, prepared by a paralegal, S. McGrory. The Landlord replied on October 20, 2022, objecting to the consideration of those submissions.

The Tenants' requests to extend are granted and the submissions have been considered in rendering this decision. The Tenants were unrepresented at the hearing, there was a delay in providing the Tenants with the hearing recording and having submissions prepared a paralegal levelled the playing field. The Landlord was able to respond to the Tenants' submissions before the decision was rendered.

### **Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy between the Landlords and the Tenants is terminated effective November 14, 2022.

### Preliminary objections

2. The Tenants submitted that the notice of termination (Form N7) is defective because it incorrectly identifies the rental unit. The Tenants submit that the rental unit is located in Vaughan, not Woodbridge. Section 43 of the *Residential Tenancies Act, 2006* provides that a notice of termination shall identify the rental unit. The street address and the unit concerned, as well as the postal code, sufficiently identifies the rental unit.
3. In the Tenants' post-hearing submissions the Tenants contend that the notice of termination is also defective because it does not provide sufficient particulars of the alleged conduct. The notice of termination provides sufficient particulars, including dates on which the Tenants allegedly smoked marijuana in the rental unit.

### Substantial Interference and Impaired Safety

4. The rental unit is the basement of the Landlords' house. The building has three or fewer residential units. The Landlords live in the building. The Landlords live in the upper part of the house with their two sons, aged 5 and 8 respectively. The Landlords advertised the rental unit as a non-smoking unit. In their rental application, dated September 9, 2022, the Tenants stated that they do not smoke. The tenancy agreement does not expressly prohibit smoking. After the Tenants moved into the rental unit the Landlords started to smell marijuana smoke coming from the Tenants' unit. The Landlord confronted the Tenants about smoking marijuana in the unit and there are numerous text messages between the parties on this issue.
5. The Tenants do not deny smoking marijuana in the rental unit. The Tenants' position was that the lease does not prohibit smoking in the rental unit and that they have the right to smoke marijuana in the unit. The Tenants also claim that they use a bong and a filter system (Smoke buddy) to smoke marijuana and therefore the smoke escaping to the upper part of the house is minimal.
6. The Landlords do not like the strong smell of marijuana invading the upper of the house. Their main concern however is the well-being of their sons. The strong and persistent smell of marijuana made the Tenants' son ill. The older son experienced headaches and the younger experienced episodes of vomiting a result of the smell of marijuana. The children's doctor, Dr. J. Rosenberg, provided a note confirming the link between marijuana smoke and their symptoms and recommends removing those conditions. The Landlords

have tried to reduce the impact by closing vents in the upper part of the house, thus reducing the benefits of the HVAC system. I prefer the doctor's assessment over the Tenants' claim that the impact of their smoking marijuana is minimal.

7. In light of the above, I find the Tenants' conduct has substantially interfered with the Landlords' reasonable enjoyment of the building, their home.
8. By inducing vomiting episodes on the part of Landlord's youngest son the Tenants have also seriously impaired his safety. This conduct occurred in the residential complex.
9. Based on the Monthly rent, the daily compensation is \$52.60. This amount is calculated as follows: \$1,600.00 x 12, divided by 365 days.
10. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

### Discretion

12. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
13. In their post-hearing submissions the Tenants assert that the Tenant Michael Leaf (ML) has a marijuana prescription from a nurse and therefore, pursuant to *the Ontario Human Right Code*, the Landlords have a duty to accommodate his smoking of marijuana. The Tenants submit that the Landlords failed to accommodate MF's disability. The Tenants failed to establish a nexus between MF's alleged disability and the smoking of marijuana. The Tenants did not lead evidence of this issue at the hearing and MF did not ask the Landlords to accommodate a disability. The Tenants insisted that they had the right to smoke marijuana in the rental unit because it is not prohibited by the lease. The Landlords tried to find a compromise by asking MF to switch to edibles or smoke outside but MF refused. Under the circumstances the tenancy cannot continue.

### **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 November 14, 2022.
2. If the unit is not vacated on or before November 14, 2022, then starting November 15, 2022, 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 November 15, 2022. The Sheriff is requested to expedite the enforcement of this order.
4. The Tenant shall also pay the Landlord compensation of \$52.60 per day for the use of the unit starting November 15, 2022 until the date the Tenants moves out of the unit.

5. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
  
6. If the Tenant does not pay the Landlord the full amount owing on or before November 14, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 15, 2022 at 4.00% annually on the balance outstanding.

**November 9, 2022**

**Date Issued**

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Egya Sangmuah

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 May 15, 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.