

Order under Section 78(11)  
**Residential Tenancies Act, 2006**

**File Number:** TEL-53165-14-SA

J.M. (the 'Landlord') applied for an order to terminate the tenancy and evict S.T. and J.F. (the 'Tenants') because they failed to meet a condition specified in the settlement mediated by the Board on August 7, 2014 with respect to application TEL-49345-14.

The Landlord's application was resolved by ex parte order TEL-53165-14, issued on October 31, 2014. The Tenants filed a motion to set aside order TEL-53165-14.

This motion was heard in Peterborough on November 25, 2014.

The Landlord's Legal Representative, A.B., Property Manager, M.H. and the Tenants attended the hearing.

**Landlord's witnesses:** C.R. and M.R., superintendents  
M.P., neighbouring tenant  
M.E., tenant  
P.M., private investigation, former Toronto police officer

**Determinations:**

1. The parties attended the Board and entered into a mediated settlement on August 7, 2014. Among the terms of the agreement, "The Tenants, their guests and /or occupants will not smoke marijuana in the rental unit or at the residential complex." The Landlord was authorized to file an application under section 78 of the Act if the Tenants breached any of the terms of the agreement.
2. The Landlord filed an application under section 78 of the Act on October 27, 2014, claiming that the Tenants had continued to smoke marijuana in the unit. As a result the Board issued the order without holding a hearing.
3. The Tenants seek to have the order set aside on the grounds that they did not breach the agreement, as there had been no marijuana smoking in the unit, before or after the mediated agreement, despite their signing the agreement to cease such activity.
4. Nothing in the Tenants' demonstrated, meaningful participation in the proceedings at the hearing would lead me to believe that the Tenants were coerced into signing to the terms of the agreement, or that they were unclear about the terms they were agreeing to by way of signature.
5. This is a 3 store building containing 25 units. The units are located in several wings across the building. Each wing is separated from the common entry area by a fire-safety door. There are 4 units in the Tenants' wing. The Tenants' unit adjoins the front entry way, and their windows are, as depicted in photographs provided, located, immediately

beside the front entry, doorway, looking onto the front walkway. The unit on the other side of the entry door to the building is located farther away from the entry door at approximately 15 feet, in a different wing.

6. Considering the relevant evidence provided as follows, I find the Tenants' evidence lacks credibility, and that they continued to smoke marijuana and/or allow marijuana smoking in the unit after the agreement was signed.
7. Specifically, on August 7, at approximately 10:30 p.m. M.P., a neighbouring tenant, complained to the Landlord that the smell of marijuana smoke from the Tenants' unit was bothering her again. She looked in the hallway and saw an open candle outside the Tenants' door.
8. C.R., the superintendent investigated the adjoining tenant's complaint by walking the hallway of that wing and confirmed that of the 4 units, the smell was only emanating from the Tenants' unit.
9. The Tenants claimed the unit was empty, they were away at a park celebrating a birthday. Two persons confirmed that the smell of marijuana was emanating from the Tenants unit. The Tenants' evidence is further discredited by the lack of proof that they were at a park as claimed, or that the unit was empty at 10:30 p.m.
10. On August 25 at approximately 7:35 the superintendent C.R., verified that the smell of marijuana smoking was coming from the Tenants' unit. The Landlord notified the Tenants, in writing to cease this conduct.
11. The Tenants contacted the Landlord's office claiming that the smell was not marijuana but incense.
12. It is generally known that the smell of marijuana smoke is distinctly different from any other including, incense, sage or other air fresheners; and the odour is usually readily identifiable as being marijuana smoke. I find the Tenants' assertion about the odour on this occasion was also false.
13. On October 21, 2014 the superintendents, C.R. and M.R. experienced the strong smell of marijuana coming from the Tenants' unit as they approached the front entrance of the building. C.R. checked the units in the wing and again ascertained that the smell was coming from the Tenants' apartment. A fan was also observed on the window sill of an opened window.
14. The Tenants claimed they placed the fan on the window for fresh air purposes. On a balance of probabilities, contrary to the Tenants' claim, I find that the fan was likely placed on the window sill to distribute/remove the smell of marijuana from the building, as opposed to circulate fresh air from the open window into the unit. There would be no need to place the fan on the sill if this was the case.
15. The superintendent also testified that potential tenants who had visited the building had been discouraged to pursue a tenancy in the building because of the strong smell of

marijuana smoking at the entry of the building which the superintendent identified as being caused by smoking in the Tenants' unit.

16. The Landlord invited independent verification by, P.M., a former Toronto police officer involved in undercover, drug investigations who indicated he was knowledgeable about the use/smell of marijuana. At approximately 9:00 p.m. on October 21 he attended the building, where he testified that he encountered/verified a strong smell of marijuana on the walkway as he approached the entry door, and in the common lobby area. The witness stated that the odour was consistent with the active smoking of the substance as opposed to a lingering odour in the areas in question. Although he did not attempt to ascertain the source, he stated that the smoking had to have been coming from a unit located close to the walkway/lobby area.
17. M.E., a tenant who resides in another wing of the building, stated that until recently she was a friend of the Tenants and had been a frequent visitor to their unit. She gave credible evidence, including witnessing an event, involving the female Tenant, that took place in the on-site office, that she had observed/participated in marijuana smoking in the Tenants' unit. In fact, the male Tenant questioned the witness as to whether she had brought her own marijuana to their unit on one occasion.
18. The Landlord provided, credible, detailed evidence, including dates and time of day, that clearly indicates that the Tenants have continued to smoke marijuana in the unit, disturbing others and compromising the Landlord's lawful, right, privilege and interest.
19. Despite the persuasive evidence of their smoking activities, the Tenants denied the events. In my view, this indicates a lack of responsibility on the Tenants' part. Given the Tenant's attitude/response to the situation, I find no reason to believe that the situation would improve or be corrected, or that the Tenants would comply with the terms of the mediated agreement, if the tenancy was allowed to continue.
20. However, considering the female Tenant's indication that she will be undergoing surgery sometime mid-December, and providing there are no further incidents of marijuana smoking in the unit, I find it would not be unfair to lift the stay of the ex parte order on December 30, 2014.
21. For the reasons contained herein, the following order is issued.

**It is ordered that:**

1. The motion to set aside Order TEL-53165-14, issued on October 31, 2014, is denied. The order remains in full force and effect.
2. Providing the Tenants, their guest or another occupant of the unit refrain from smoking marijuana in the unit/building, the stay of order TEL-53165-14 is lifted on December 30, 2014.

3. If the Tenants fail to refrain from smoking marijuana in the unit/complex and the Landlord ascertains that they have continued to do so in the unit/complex, then the stay of the order is lifted immediately, and the Landlord may enforce the order immediately.

**December 3, 2014**  
**Date Issued**

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**Claudette Leslie**  
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.