

Order under Section 78(6)  
**Residential Tenancies Act, 2006**

**File Number:** TNL-61699-14

R.S.N.P.H.M.I. (the 'Landlord') applied for an order to terminate the tenancy and evict S.W. (the 'Tenant') because she failed to meet a condition specified in order TNL-58458-14 issued on July 7, 2014.

This application was heard in Newmarket on September 17, 2014.

The Landlord's representative, R.K., and the Tenant attended the hearing.

(J.P.), who is a tenant residing above the Tenants unit, and who is also the superintendent of the residential complex, and the Tenant gave evidence at the hearing.

**Determinations:**

1. On July 7, 2014, order TNL-58548-14 was issued on the consent of the parties. That order provided that "The Tenant shall not engage in any behaviour as described in the N5 Notice to Terminate a Tenancy Early", dated May 9, 2014 with regard to smoking substances in the rental unit that would create an odor or smoke that substantially interferes with the reasonable enjoyment or lawful right privilege or interest of another tenant."
2. The behaviour described in the N5 Notice with regard to "smoking substances" is as follows: "Several complaints are on record regarding...smell of nefarious substances emanating from the tenant's unit. The smell of the substance smoked is permeating across other units in the housing complex resulting in discomfort and potential health hazards for those on the receiving end of the second hand smoke! On April 25, 2014 the smoke emanating from the apartment was extremely noxious and spread across the units in the housing complex..."
3. On Tuesday August 12, 2014, in an exchange of e-mails, the Tenant asked the Landlord for clarification of the condition in order TNL-58548-14, and in particular whether smoking cigarettes in her unit was a problem. The Landlord replied that smoking cigarettes was not a problem, but smoking marijuana was illegal. The Tenant advised the Landlord that she would be smoking cigarettes in her unit, but would not smoke marijuana.
4. On August 25, 2014, the Landlord filed this application, alleging that the Tenant had failed to comply with order TNL-58548-14 by breaching the following conditions: "smoking in her unit at late and odd times resulting in odor and heavy smoke that substantially interferes with the reasonable enjoyment or lawful right privilege and interest of other tenant" . There is an alleged breach of a "noise issue" which is irrelevant because there is no condition in order TNL-58548-14 relating to noise.

5. At the hearing J.P. gave evidence that she works at a local hospital on the afternoon shift from 4pm to midnight. She does not work Thursdays.
6. She has a book in which she records all activities and incidents that occur in the residential complex.
7. She gave evidence, relying on her records, that on Thursday August 10 at 9:20 p.m., her whole unit was full of marijuana smoke. She was certain that it was a Thursday because she does not work on Thursdays. She attributed the source of this smoke to the Tenant. She reported this to the Landlord's management, as a consequence of which this application was brought.
8. J.P. further stated that there was one other incident of her unit being "full of marijuana smoke" on September 7, 2014 at 1:50 a.m.
9. The Tenant denied smoking marijuana in her unit. The rental unit is a rent-geared-to-income unit, for which she pays a modest amount, and she is very concerned not to lose her housing. For this reason she requested clarification of the smoking prohibition from the Landlord on August 12 so she would not inadvertently fall afoul of the conditions in order TNL-58548-14.
10. The Tenant indicated that there has been a long standing issue between her and the tenants above her, because the Tenant has complained on a number of occasions about noise from their unit.
11. The Tenant has requested that she be moved to another unit so as to avoid the animosity of the tenants above her, and to avoid the possibility that her tenancy will be terminated by claims that she has breached the conditions of order TNL-58548-14.
12. I find that the Landlord has failed to prove, on a balance of probabilities, that the Tenant breached the condition in order TNL-58548-14.
13. To begin with, August 10, 2014 is not a Thursday, but a Sunday. Thus J.P.'s records concerning this event cannot be correct. Moreover, there is no evidence that the smoke in J.P.'s unit emanated from the Tenant's unit. It is not enough to infer that this is the case, based on a historic perception that the Tenant was a user of marijuana. If the odour in J.P.'s unit was, indeed, the odour of marijuana, it could have come from a number of different places, including other units or the outdoors.
14. It seems apparent from the evidence at the hearing that J.P. and her roommates are quick to find fault with the Tenant. I do not find their evidence concerning the alleged breach of the condition in order TNL-58548-14 to be reliable. It is interesting to note that the complaint of J.P. follows a complaint made to the Landlord by the Tenant on July 31, 2014 about noise from J.P.'s unit.
15. If the Landlord wishes to avoid further complaints between these tenants, it may wish to consider moving the Tenant as requested by her, should a suitable unit be available.

**It is ordered that:**

1. The Landlord's application under section 78 of the Act is dismissed.
2. Order TNL58458-14, issued on July 7, 2014 remains in effect.

**September 18, 2014**

**Date Issued**

\_\_\_\_\_  
Sylvia Watson

Member, Landlord and Tenant Board

Toronto North-RO  
47 Sheppard Avenue East, Suite 700, 7th Floor  
Toronto ON M2N5X5

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