



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

**File Number:** TNL-34454-21

**In the matter of:** BASEMENT, 21 BRUNEL STREET  
MAPLE ON L6A0R4

**Between:** Maha Boutros Landlord

**and**

Samer Boutari Tenant

Maha Boutros (the 'Landlord') applied for an order to terminate the tenancy and evict Samer Boutari (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes and because the Tenant has substantially interfered with the reasonable enjoyment of the residential complex by the Landlord, or substantially interfered with a lawful right, privilege or interest of the Landlord.

This application was heard in video conference room 104 on October 21, 2021.

The Landlord, the Landlord's representative, D. Ciobotaru, the Landlord's witnesses, M. Boutros ('MB') and Jalina Boutros ('JB'), and the Tenant attended the hearing.

**Determinations:**

1. The Tenant has not paid the total rent the Tenant was required to pay for the period from June 1, 2021 to October 31, 2021. Because of the arrears, the Landlord served a Notice of Termination effective July 24, 2021.
2. The Tenant did not have reliable evidence of cash rental payments to the Landlord. The Tenant's testimony that he was able to pay cash because his employer paid wages in cash is also not reliable. For example, although the Tenant asserted that he paid cash to the Landlord in June 2021, he testified that his former employer paid him that month by electronic transfer of funds. The Tenant did not have reliable evidence, however, that he withdrew money from his bank account in June 2021 to pay the rent in cash.
3. The Tenant also did not have evidence that the Landlord demanded cash rental payments. To the contrary, the evidence shows that the last payment the Tenant made to the Landlord in May 2021 was by electronic transfer of funds.
4. I therefore find that the Tenant's testimony is not reliable, and I prefer instead the Landlord's evidence that the Tenant has not paid rent for the period June 1, 2021 to October 31, 2021.

5. The Landlord collected a rent deposit of \$1,450.00 from the Tenant and this deposit is still being held by the Landlord.
6. Interest on the rent deposit is owing to the Tenant for the period from April 1, 2021 to July 24, 2021.
7. The Landlord submitted evidence of a September 1, 2021 text message from the Landlord to the Tenant as evidence of her attempt to resolve the rent arrears. The text message, however, does not propose discussing a payment plan or any other resolution that gives the Tenant an opportunity to preserve the tenancy. MB's testimony that he gave the Tenant his telephone number to discuss rent arrears was vague and insufficient to reliably determine a good faith effort to resolve with the Tenant the rent arrears. Moreover, MB's testimony shows that the Landlord's principal concern was about cigarette smoking at the property.
8. I therefore find pursuant to subsection 83(6) that the Landlord did not prove, on a balance of probabilities, that she tried to resolve the Tenant's rent arrears with the Tenant.
9. The Act does not require, however, the Board to take specific action in this circumstance. Additionally, the Landlord proved on a balance of probabilities that the Tenant substantially interfered with the Landlord's reasonable enjoyment of the property and other lawful rights, privileges and interests. The tenancy shall therefore be terminated.
10. The Landlord proved, on a balance of probabilities, that the Tenant smokes cigarettes inside the basement rental unit, despite the tenancy agreement.
11. The Landlord and the Landlord's witness JB reside on the ground floor of the residential complex. The Landlord and JB gave testimony and reliable medical evidence that they have asthma that is affected by second-hand tobacco smoke. Both further testified that the Tenant smokes cigarettes inside the rental unit, and that the smoke affects their health. JB submitted reliable evidence of the Landlord's efforts to mitigate the transmission of second-hand smoke from the rental unit to the Landlord's residence, including sealing vents for the shared forced-air ventilation system.
12. The Tenant agreed that the tenancy agreement prohibits smoking inside the residential complex. The Tenant expressly denied smoking inside the rental unit. I find, however, that the Tenant's assertion is not credible.
13. The Landlord submitted a photograph of a crude vent the Tenant installed in the rental unit. The Landlord's witnesses gave evidence of their belief that the Tenant installed the vent to try to force cigarette smoke outside the basement rental unit and reduce second-hand smoke. The Tenant explained that he sealed the window and installed a small fan because the Landlord maintained the air conditioning on at too low a temperature.
14. I find the Tenant's explanation lacks an air of reality. No reasonable person would have sealed a window with plywood or thin particleboard and install a small fan to heat an

overly air-conditioned rental unit. On the totality of the evidence, I find that the Landlord's belief that the fan is an effort to vent the rental unit of second-hand smoke is, on a balance of probabilities, correct. I therefore find that the Landlord proved that the Tenant smokes cigarettes inside the rental unit, contrary to the tenancy agreement.

15. The Tenant agreed that he smokes at the property daily. This is consistent with the Landlord's and Landlord's witnesses' testimony that the Tenant continued to smoke in the rental unit for the seven-day period after receiving the Form N5 notice of termination. I therefore find that the Tenant did not void the notice under subsection 64(3) of the Act by ceasing smoking inside the rental unit.
16. The Landlord proved, on a balance of probabilities, that the Tenant has used an area of the residential complex to which he is not entitled access.
17. The Landlord submitted evidence that the Tenant accessed and uses a small crawlspace or storage area in the furnace room, without the Landlord's consent. The Landlord testified that the storage area and furnace room in general are not included in the tenancy agreement and submitted documentary evidence of her consistent claim of exclusive access and use of the area where the Tenant's property is stored.
18. The Tenant, by contrast, gave evidence of his belief that is permitted to enter the furnace room and use the adjoining storage or crawlspace. The Tenant, however, did not have evidence to determine that his belief correctly reflects the terms of the tenancy agreement. No evidence was given that the Tenant is permitted to access and use the property's furnace room. By contrast, the Landlord's testimony that the basement rental unit does not include the furnace room is reasonable on its face and credible. The Tenant's testimony that the furnace room door was left unlocked is not evidence of the Tenant's right to enter the room and use it, or an adjoining storage area, to store personal belongings.
19. I therefore find that the Tenant does not have the right to access and use the furnace room and adjoining storage/crawlspace under the tenancy agreement. The Tenant's entry into the furnace room and use of the storage area represent substantial – or non-trivial – interferences with the Landlord's lawful rights, privileges and interests.
20. The Tenant did not remove the items from the storage area in the furnace room within the seven-day period after receiving the notice of termination. The Tenant therefore again did not void the Form N5.
21. The Tenant agreed at the hearing that he is entitled to one parking space at the residential complex, but parks three vehicles there. One vehicle is a motorcycle, which the Tenant stores between the residential complex and a neighbouring residence. The Tenant stores another motorcycle under a cover in the backyard. The Landlord testified that storing the motorcycles has caused neighbours to complain and damage to the backyard lawn.

22. The Tenant denied knowledge of any complaint from the neighbour about storing his motorcycle between the houses, but conceded that he had previously moved the motorcycle to its location from the other side of the house, when the neighbour on that side complained. The Landlord, by contrast, testified that she has received complaints from the neighbour, between whose house and the Landlord's the Tenant's motorcycle is stored.
23. The Tenant did not dispute the Landlord's testimony that storing the other motorcycle in the backyard has damaged the lawn.
24. Based on the evidence adduced at the hearing, I find on a balance of probabilities that the Tenant has substantially interfered with the Landlord's lawful rights, privileges and interests by storing a motorcycle between the Landlord's and neighbour's houses, and another motorcycle in the backyard. Although the Tenant received the Landlord's requests to remove the motorcycles and later the Landlord's Form N5 notice of termination, the Tenant did not do so.
25. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
26. Although the Tenant gave evidence of his belief that he will require several months to vacate the rental unit, the Tenant did not have evidence of any effort to find new accommodation that supports that belief. Additionally, there is no evidence that the Tenant will cease the interfering activity or pay rent to the Landlord. It is therefore not appropriate to postpone the eviction date beyond a reasonable length of time.
27. Because the tenancy is being terminated for both non-payment of rent and for interfering with the Landlord, this eviction order is not voidable.

**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 19, 2021.
2. The Tenant shall pay to the Landlord \$6,244.34\*, which represents the amount of rent owing and compensation up to November 8, 2021, less the rent deposit and interest the Landlord owes on the rent deposit.
3. The Tenant shall also pay to the Landlord \$47.67 per day for compensation for the use of the unit starting November 9, 2021 to the date the Tenant moves out of the unit.
4. The Tenant shall also pay to the Landlord \$201.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing\* on or before November 19, 2021, the Tenant will start to owe interest. This will be simple interest calculated from November 20, 2021 at 2.00% annually on the balance outstanding.

6. If the unit is not vacated on or before November 19, 2021, then starting November 20, 2021, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 20, 2021.



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Harry Cho  
Member, Landlord and Tenant Board

**November 8, 2021**

**Date Issued**

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on June 1, 2022 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.

\* Refer to section A on the attached Summary of Calculations.

**Schedule 1  
SUMMARY OF CALCULATIONS**

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**A. Amount the Tenant must pay if the tenancy is terminated:**

<b>Reasons for amount owing</b>	<b>Period</b>	<b>Amount</b>
Arrears: (up to the termination date in the Notice of Termination)	June 1, 2021 to July 24, 2021	\$2,594.11
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	July 25, 2021 to November 8, 2021	\$5,100.69
Less the rent deposit:		-\$1,450.00
Less the interest owing on the rent deposit:	April 1, 2021 to July 24, 2021	-\$0.46
Amount owing to the Landlord on the order date:(total of previous boxes)		<b>\$6,244.34</b>
Additional costs the Tenant must pay to the Landlord:		\$201.00
Plus daily compensation owing for each day of occupation starting November 9, 2021:		\$47.67 (per day)
<b>Total the Tenant must pay the Landlord if the tenancy is terminated:</b>		<b>\$6,445.34, + \$47.67 per day starting November 9, 2021</b>

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