



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

**File Number:** EAL-89487-20

**In the matter of:** 3, 25 ELEANOR DRIVE  
NEPEAN ON K2E5Z8

**Between:** Minto Apartment Limited Partnership

Landlord

**and**

Asunta Majak

Tenant

Minto Apartment Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Asunta Majak (the 'Tenant') because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused undue damage to the premises. The Landlord has also applied for an order requiring the Tenant to compensate the Landlord for the damage. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard via video teleconference on September 29, 2021. An employee of the Landlord, Alexander Tallim attended the hearing on behalf of the Landlord. The Landlord's Legal Representative, Anne Skelly attended the hearing. As of 1:18 p.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the Board.

**Determinations:**

N5 Notice – substantial interference

1. The Landlord served two N5 Notices of Termination ("N5 Notice") alleging that the Tenant substantially interfered with the reasonable enjoyment or another lawful right, privilege or interest of the Landlord or another tenant pursuant to s.64(1) of the *Residential Tenancies Act, 2006* (the "Act").

First N5 Notice

2. The Landlord served the Tenant with an N5 Notice to End your Tenancy For Interfering with Others, Damage or Overcrowding ('N5 Notice') on January 7, 2020. The termination date in the N5 Notice was January 29, 2020. I am satisfied that the first N5 Notice was properly served and complied with s.64 of the Act.
3. The N5 Notice alleges substantial interference with another tenant's or the landlord's reasonable enjoyment of the premises and/or lawful rights, privileges, or interests. The

N5 Notice gave the Tenant an opportunity to void the notice within 7 days by refraining from the conduct complained of in the notice.

4. The allegations noted in the first N5 Notice are:
  - Dec. 16, 2019 – Advance notice delivered of scheduled treatment on Dec. 20, 2019 of roaches and necessary preparations.
  - Dec. 20, 2019 – Technician arrived and not all prep work was completed. Some of the preparation work was done but access to baseboards in hallway and bedroom not provided. Advised that a follow up is required when preparations are complete.
  - Dec. 24, 2019 – Advance notice delivered of scheduled treatment on Jan. 3, 2020 of roaches and necessary preparations.
  - Jan. 3, 2020 – not all prep work completed. Access to baseboards in hallway and bedroom not provided
  - Jan. 7, 2020 – follow up treatment scheduled for Jan. 13, 2020. Ensure all necessary prep is completed so treatment can be completed.
5. In accordance with section 64(3) of the *Residential Tenancies Act, 2006*, (the “Act”), the first N5 Notice is voided if the Tenant does not engage in any further conduct of the type described in the N5 Notice during the 7 day period after the N5 Notice was given to the Tenants. In this case, that 7 day voiding period was January 8 – 28, 2020.
6. The Landlord stated the pest control company, Regionex was successfully able to perform the pest control residual treatment on January 13, 2020. The Landlord stated as a result, the Tenant voided the first N5 notice.

#### Second N5 Notice

7. The Landlord served a second, non-voidable N5 notice on the Tenant pursuant to s. 68 of the Act on February 7, 2020. The second N5 Notice noted a termination date of February 24, 2020.
8. The allegations in the second N5 Notice included the following:
  - Jan. 29, 2020 – advanced notice was delivered advising you of the scheduled cockroach treatment on January 29, 2020 and the necessary preparations.
  - Feb. 7, 2020 – Upon arriving at the unit, the technician noted that none of the preparations had been completed. None of the preparation work was done as there was no access to the baseboards. A Follow up treatment is scheduled for February 13, 2020. Ensure all necessary preparations are complete to ensure a treatment can be completed.
9. The L2 application also claimed \$120.000 for two visits (\$60.00) to unit on January 3, 2020 and February 7, 2020 for the incurred costs for attempted pest control treatment.

Landlord’s evidence

10. Alexander Tallim (“Mr. Tallim”) testified that he was previously the property manager at the residential complex from May 2020 – March 31, 2021. He testified there is an ongoing cockroach infestation with the Tenant’s unit which is impacting other units in the residential complex.
11. The Landlord produced evidence that proper notice to enter the Tenant’s unit to perform the residual treatment for cockroaches and the preparation instructions for the unit was provided to the Tenant on January 29, 2020. The notice indicated the residual treatment would be completed on February 7, 2020 between 9:00 am – 4:00 pm<sup>1</sup>. The note on the report from Regionex (“Regionex report”) for February 7, 2020<sup>2</sup> notes that the Tenant’s unit was not prepared for residual treatment. Further, it notes that the Tenant advised she did not receive the notice. On February 7, 2020, the Landlord provided a subsequent notice and preparation instructions to enter the Tenant’s unit for the purpose of providing the residual treatment on February 13, 2020 between 9:00 am – 4:00 pm<sup>3</sup>. The Regionex report entry for February 13, 2020 notes the unit was not prepared for residual treatment<sup>4</sup>
12. Mr. Tallim stated there are issues with sanitation in the rental unit and that the Landlord has made 39 unsuccessful attempts to perform the residual treatment on the Tenant’s unit since February 2020. The Landlord relies on the Regionex report to support this<sup>5</sup>. The Landlord produced evidence to support that since February 2020, the Landlord provided several notices and preparation instructions to the Tenant which advised of the dates and times that pest control would be attending her unit to perform the residual treatment for cockroaches<sup>6</sup>.
13. Mr. Tallim stated the unit located directly below the Tenant’s unit is vacant to date and the Landlord attempted to rent the unit but cockroaches continue to enter that unit. The unit located across the hall from the Tenant’s unit was impacted with cockroaches, but that unit was treated and no longer has cockroaches. Mr. Tallim stated that the Landlord will not be able to successfully treat the Tenant’s unit for cockroaches as long as the Tenant remains in the unit. The Landlord requested an eviction date of October 31, 2021.

## Analysis

### First N5 Notice

14. I accept the uncontested evidence of the Landlord that the first N5 Notice was voided because the residual treatment was successfully applied in the Tenant’s unit on January 13, 2020 which was within the 7 day voiding period. The first N5 Notice is therefore dismissed.

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<sup>1</sup> Exhibit 1 – Landlord’s evidence. Notice to enter rental unit, dated January 29, 2020 and preparation sheet instructions, pages 36-37.

<sup>2</sup> Exhibit 2 – Landlord’s evidence. Regionex report entry for February 7, 2020, at page 9.

<sup>3</sup> *Supra*, note 1, at pages 34, 35.

<sup>4</sup> *Supra*, note 2, at page 8.

<sup>5</sup> *Ibid*, pages 1-8.

<sup>6</sup> Exhibit 1 – pages 2-36. Exhibit 2 – pages 16-25.

## Second N5 Notice

15. I find the Landlord has met their onus of establishing on a balance of probabilities that the Tenant substantially interfered with the reasonable enjoyment or another lawful right, privilege or interest of the Landlord or another tenant pursuant to s.64(1) of the Act. I find the Landlord served proper notice and preparation instructions to the Tenant on January 29, 2020 and February 7, 2020 which advised the Tenant of the residual treatments to be performed on February 7, 2020 and February 13, 2020. While the Regionex report entry for February 7, 2020, notes the Tenant advised she did not receive the notice regarding an inspection on that date, the Tenant did not attend the hearing. On a balance of probabilities, I find the Tenant received the notice on January 29, 2020 advising of the scheduled residual treatment on February 7, 2020.
16. I find the pest control company could not successfully treat the cockroach infestation in the Tenant's unit on February 7, 2020 and February 13, 2020 as a result of the Tenant not properly preparing the unit for residual treatment. I accept the Landlord's evidence that several additional notices and preparation instructions were provided to the Tenant which advised the Tenant of additional scheduled residual treatments which needed to be performed on her unit. Upon review of the Regionex report, I accept that Regionex pest control attended the Tenant's unit on 37 separate occasions from February 2020 – August 2021 and attempted to perform residual treatments inside the Tenant's unit and that these treatments were unsuccessful. I accept the Landlord's evidence that to date the problem with the cockroach infestation within the Tenant's unit has not been resolved. I accept that this has impacted other units within the residential complex and that the Landlord has been unable to rent the unit located below the Tenant's unit and that the unit located across the hall from the Tenant was treated for cockroaches as a result of the proximity to the Tenant's unit.
17. The L2 application claims \$60.00 for the pest control attempted visit on January 3, 2020 which was included in the first N5 Notice. As the first N5 Notice was dismissed because the Tenant voided the Notice, I do not find the Landlord is entitled to this amount claimed. I find the Landlord is entitled to \$60.00 as an incurred cost claimed on the L2 application for the pest control attempted visit on February 7, 2020 which was unsuccessful due to the unit not being properly prepared by the Tenant.
18. 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 not be unfair to postpone the eviction until October 31, 2021 pursuant to subsection 83(1)(b) of the Act.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated, as of October 5, 2021. The Tenant must move out of the rental unit on or before October 31, 2021.
2. The Tenant shall pay to the Landlord \$60.00, which represents the Landlord's incurred cost for the unsuccessful pest control treatment on February 7, 2020.

3. The Tenant shall also pay to the Landlord \$46.19 per day for compensation for the use of the unit from October 6, 2021 to the date the Tenant moves out of the unit.
4. The Tenant shall also pay to the Landlord \$175.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before October 16, 2021, the Tenant will start to owe interest. This will be simple interest calculated from October 17, 2021 at 2.00% annually on the balance outstanding.
6. If the unit is not vacated on or before October 31, 2021, then starting November 1, 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 1, 2021.

2021 CanLII 141483 (ON LTB)

**October 5, 2021**  
**Date Issued**

  
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Kimberly Parish  
Member, Landlord and Tenant Board

Eastern-RO  
255 Albert Street, 4th Floor  
Ottawa ON K1P6A9

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 May 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.