



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

**File Number:** NOL-39814-20

**In the matter of:** 205, 409 MAIN STREET E  
NORTH BAY ON P1B1B6

**Between:** D & A Properties Limited

Landlord

**and**

Daniel Swan

Tenant

D & A Properties Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Daniel Swan (the 'Tenant') because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment of the residential complex and/or the lawful rights, privileges or interests of the Landlord or another tenant and because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex willfully 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.

This application was heard by videoconference on October 18, 2021. The Landlord was represented by Yannick Benoit. The Tenant attended and was represented by Mairghread Knought.

**Determinations:**

1. The application is based on a non-voidable Notice of Termination (N5) served on the Tenant on February 19, 2020 with a termination date of March 4, 2020 because the Tenant kept many dogs and cats, including aggressive dogs, in the rental unit, and allowed the animals to defecate and urinate in the unit causing damage and an intense smell; because the Tenant has behaved aggressively towards other tenants; his guests have entered other units unlawfully; he has caused serious damage to the unit.
2. Because this application is based on a second notice pursuant to s. 68 of the Residential Tenancies Act, 2006 (the "Act"), I must examine the validity of the first Notice of Termination (N5) served on the Tenant with a Termination date of January 10, 2020.
3. The first N5 is invalid.
4. Prior to the hearing the parties made unsolicited, written submissions regarding the contents of the first N5 specifically as it relates to the details set out in the notice.

5. Sec. 43 of the Residential Tenancies Act, 2006 (the "Act") requires that a notice of termination set out the reasons and details respecting the termination. In the Divisional Court's decision in *Ball v. Metro Capital Property*, [2002] O.J. No. 5931, the court found that a notice of termination must contain particulars. The court's decision states, "particulars should include, dates and times of the alleged offensive conduct together with a detailed description of the alleged conduct engaged in by the tenant."
6. The first N5 notice contains general allegations related to the smell of animal feces and urine, a steady stream of visitors who accost, assault and threaten other tenants, and the presence of 7-8 cats and dogs in the rental unit being permitted to roam about the complex unattended. Under Date/Time, the notice only identifies the complaints as "ONGOING."
7. This is an application about eviction, and the potential loss of housing is a serious matter. As such, tenants have the right to be able to answer to allegations of their behaviour giving rise to the application. Neither the details of the events nor the Date/Time satisfy the Divisional Court's requirements as set out in *Ball v. Metro Capital*.
8. At the hearing the Landlord's Representative sought to save the application by relying on s. 212 of the Act which states "Substantial compliance with this Act respecting the contents of forms, notices or documents is sufficient." This provision does not say substantial compliance with the Act is sufficient; rather, it says substantial compliance with the "contents of forms, notices or documents" is sufficient. In other words, what section 212 means is that the mandatory requirements of the Act are not up for debate, but mistakes or typographical errors in filling out forms will not invalidate an otherwise valid document. I do not find that the particulars set out in the first Notice of Termination remotely satisfy the concept of substantial compliance.
9. Because the first Notice of Termination is invalid, I cannot consider the second N5 on which this application is based. Therefore the application must be dismissed.

**It is ordered that:**

1. The Landlord's application is dismissed.

**December 22, 2021**

**Date Issued**

Northern-RO  
199 Larch Street, Provincial Building, Suite 301  
Sudbury ON P3E5P9



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Dawn King

Member, Landlord and Tenant Board

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 July 3, 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.