



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

**Citation:** YMCA v Wenzl, 2024 ONLTB 21655

**Date:** 2024-04-02

**File Number:** LTB-L-022724-23

**In the matter of:** 448, 79 JAMES ST S HAMILTON  
ON L8P2Z1

**Between:** YMCA Hamilton/ Burlington / Brantford Landlord

**And**

Matthew Wenzl Tenant

YMCA Hamilton/ Burlington / Brantford (the 'Landlord') applied for an order to terminate the tenancy and evict Matthew Wenzl (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises.

This application was heard by videoconference on January 23, 2024.

Only the Landlord's agent Ashley Laing attended the hearing.

The Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the tenancy shall be terminated on April 30, 2024.
2. The Tenant was in possession of the rental unit on the date the application was filed.

**N7 Notice of Termination**

3. On January 30, 2023, the Landlord gave the Tenant an N7 notice of termination deemed served the same date. The notice of termination contains the following allegations:

- On January 29, 2023 the Landlord received complaints that the Tenant was throwing items out of their window onto the street below. Some of the items being thrown included sheet plastic, metal, wood, and knives;
  - On January 29, 2023 the Landlord inspected the rental unit and observed the bedroom window broken, which is allegeded to be wilful damage.
4. Ms. Laing described the rental complex as a five-story residential building with 74 men currently living there in transitional housing.
  5. When employees of the Landlord got complaints about items being thrown out the Tenant's window, they went to the street level and witnessed sheet plastic, metal, wood, and knives below. The police were called on scene to ensure the safety of other tenants and the staff. It was unclear about whether the Tenant admitted to throwing items out of the window.
  6. Additionally, the same date, employees of the Landlord went into the rental unit and witnessed the glass of the window shattered. The Tenant admitted to breaking the glass, cutting his hand in the process.
  7. The Landlord received multiple complaints from other tenants who witnessed the Tenant throw items off the balcony, presumably from outside at street level. Ms. Laing indicated that the tenants who filed complaints are fearful for their safety and did not want to testify at the hearing
  8. There was a strong possibility that individuals were walking by on the street that could have been injured when items were thrown out the window. Ms. Laing testified that the building is in a very populated area, and there are constantly individuals walking by on the street right below the Tenant's window.
  9. Section 66 of the Act states:
    - 66** (1) A landlord may give a tenant notice of termination of the tenancy if,
      - (a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and
      - (b) the act or omission occurs in the residential complex.
  10. I am making a finding of fact that the Tenant was likely the person who was throwing items out the window on January 29, 2023. There is no evidence before me that anyone was injured as a result of the Tenant's conduct on January 29, 2023. Despite this, I find that the actions of the Tenant are extremely worrisome, and on a balance of probabilities seriously impaired the safety of any person who may have been on the street when the Tenant threw items out of his rental unit window. The acts of the Tenant occurred in the residential complex.

11. With respect to the broken window, I am not satisfied that the Tenant wilfully damaged the window as alleged in the N7 Notice. Ms. Laing testified that police were called on scene but could not produce a police report. No pictures of the alleged broken glass were submitted to the Board as evidence. The individual who witnessed the broken glass was not present at the hearing to testify about the incident. On a balance of probabilities, I find that the Landlord has not proven that the damage was wilful.

#### N6 Notice of Termination

12. The Landlord attempted to amend the L2 Application by adding an N6 Notice of Termination to the. The N6 Notice was dated May 13, 2023 and served the same date. The L2 Application was filed March 16, 2023, two months prior to the N6 Notice being served.
13. Section 69(1) of the Act states: "A landlord may apply to the Board for an order terminating a tenancy and evicting the tenant if the landlord has given notice to terminate the tenancy under this Act."
14. The Landlord is required to file an application to enforce an N6 Notice after the notice has been served, not before. Considering the fact the N6 Notice existed only after filing of this application, the Landlord would be in breach of section 69(1) were an amendment to be allowed. Therefore, the Landlord's request to amend the application to add the N6 Notice is denied.
15. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

#### Relief from eviction

16. I understand from the Landlord that this is transitional housing and the tenants who reside there may be vulnerable. 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 April 30, 2024 pursuant to subsection 83(1)(b) of the Act.

#### **It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated April 30, 2024.
2. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
3. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2024 at 7.00% annually on the balance outstanding.
4. If the unit is not vacated on or before April 30, 2024, then starting May 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
5. 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 May 1, 2024.

**April 2, 2024**

**Date Issued**

\_\_\_\_\_  
Brett Lockwood  
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor, Toronto ON M7A 2G6

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 of the Tenant expires on November 1, 2024 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.