



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

**Citation:** Yip v McIntyre, 2023 ONLTB 77005

**Date:** 2023-11-29

**File Number:** LTB-L-046466-22

**In the matter of:** 3, 20 BUTTONWOOD AVE  
YORK ON M6M2J1

**Between:** Wendy Yip Landlord

**And**

Michelle McIntyre Tenant

Wendy Yip (the 'Landlord') applied for an order to terminate the tenancy and evict Michelle McIntyre (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 or lawful right, privilege or interest of the Landlord or another tenant;
- the Tenant has been persistently late in paying the Tenant's rent.

This application was heard by videoconference on November 16, 2023.

The Landlord's Agent, Tom Gerovasilis, and the Tenant attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities one of the grounds for termination of tenancy but I exercise my discretion under s.83 of the Act to grant relief from eviction subject to conditions.
2. The Tenant was in possession of the rental unit on the date the application was filed.

**N5 Notice of Termination**

3. On July 24, 2022, the Landlord gave the Tenant an N5 notice of termination with a termination date of August 31, 2022. The notice of termination contains allegations that the Tenant was playing loud music on three specified dates and times.
4. The Tenant stopped the conduct or activity or corrected the omission within seven days after receiving the N5 notice of termination. The Landlord did not provide any evidence of the Tenant playing loud music during the period July 25 to July 31, 2023. Therefore, the

Tenant voided the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

### **N8 Notice of Termination**

5. On July 24, 2022, the Landlord gave the Tenant an N8 notice of termination with a termination date of September 30, 2022. The notice of termination alleged the Tenant paid rent late in January, February, July, September, November, and December 2021 and January to May, and July 2022. The rent was paid by the 10<sup>th</sup> of each month, except July 2021 which was paid July 30, 2021. The Tenant did not dispute these claims.
6. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the 1<sup>st</sup> day of each month. The rent has been paid late 12 times in 19 months. On some of those occasions the Landlord served the Tenant with an N4 notice.
7. The Tenant testified her job was impacted by COVID-19 in 2021. She worked for an online retailer and sales were not frequent enough to sustain her employment. In March of 2021, the Tenant's mother had some financial difficulty which resulted in her moving in with the Tenant. By May of 2021, the Tenant had her mother move into a retirement home. The Tenant and her siblings have been paying for the mother's apartment.
8. The Tenant requested a conditional order to pay rent on time. Her income each month can sustain her expenses including her rent. The Tenant has resided in the rental unit for 10 years; rent for the apartment is affordable and finding money to save for first and last months' rent for another apartment is not within her means.
9. The Landlord requested a standard order terminating the tenancy. When the rent is paid late, the Landlord has to borrow money from a credit line or third party to pay bills associated with the complex, such as mortgage, property tax, water, and other utilities. The complex is owned by an independent landlord, and she has a tight budget each month to float the costs of the complex.
10. The Tenant was ordered to pay rent on time in 2015 and complied with the conditions of that order.
11. Since serving the notice, the Landlord issued 10 subsequent N4s over a 16-month period. The Landlord testified the Tenant is late every month but does not receive an N4 each time she is late.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

### **Relief from eviction**

13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the Tenant's ability to pay the rent on time and length of tenancy and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

14. The Tenant was willing to agree to a conditional order to pay on time. The Tenant indicated she will make arrangements with her siblings to help her mother in other ways so she can adhere to the conditional order.
15. This is a decade long tenancy. One other time during the tenancy, there was a pay on time order which the Tenant adhered to for an entire year. This shows the Tenant understands the implications of the order and is willing to abide by the conditions.
16. I acknowledge that the Landlord has difficulty paying bills as they come due as a result of the Tenant's late payment. This conditional order is intended to address that difficulty as it requires the Tenant to pay on time.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. **The Tenant shall pay the rent for December 2023 on or before December 10, 2023 if she has not done so prior to the receipt of this order.**
3. The Tenant shall pay to the Landlord the lawful rent in full and on time each month from January 1, 2024 to December 1, 2024.
4. If the Tenant fails to comply with the conditions set out in paragraphs 2 or 3 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
5. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing in paragraph 5 of this order on or before December 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 11, 2023 at 7.00% annually on the balance outstanding.

**November 29, 2023**

**Date Issued**

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Elena Jacob

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.