



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

Citation: Hladysh v Gough, 2023 ONLTB 77262

Date: 2023-11-27

File Number: LTB-L-006452-23

In the matter of: 9 Baldwin Circle
Thorold Ontario L2V4C9

Between: Y-Lara Hladysh Landlord

And

Stacey Gough Tenants Chuck a.k.a Charles Kloestra

Y-Lara Hladysh (the 'Landlord') applied for an order to terminate the tenancy and evict Stacey Gough and Chuck a.k.a Charles Kloestra (the 'Tenants') because the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.

This application was heard by videoconference on November 15, 2023.

The Landlord and the Landlord's Personal Support Worker Heather MaClean attended the hearing. The Tenants and the Tenants' Legal Representative Mitchell Kent also attended the hearing.

Determinations:

1. As explained below, the Landlord's claim is dismissed.

N5 Notice of Termination – Substantial Interference

2. On October 9, 2022, the Landlord gave the Tenants an N5 notice of termination by hand, by giving it to the Tenant Stacey Gough directly. The N5 notice of termination had a termination date of September 30, 2022 and contained allegations related to unpaid water bills.

Pursuant to section 64(2)(a) of the *Residential Tenancies Act, 2006* (the 'Act') an N5 notice of termination must provide a termination date not earlier than the 20th day after a notice is given. Section 64 states:

Termination for cause, reasonable enjoyment

File Number: LTB-L-006452-23

64 (1) A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

Notice

- (2) A notice of termination under subsection (1) shall,
- (a) provide a termination date not earlier than the 20th day after the notice is given;
 - (b) set out the grounds for termination; and
 - (c) require the tenant, within seven days, to stop the conduct or activity or correct the omission set out in the notice.

Notice void if tenant complies

- (3) The notice of termination under subsection (1) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission.
3. Given that the Landlord's N5 notice contained a termination date which had already passed by the time it was served, the N5 notice does not comply with section 64 of the Act and cannot form the basis of an application which seeks termination of the tenancy, as the Tenants were not provided with a minimum of 20 days notice.
 4. In addition, a landlord is required to file the associated application, being an L2 within 30 days of the termination date set out in an N5 notice, otherwise the notice is deemed to be void. This is in accordance with section 46(1)(b) of the Act which states:

Where notice void

46 (1) A notice of termination becomes void 30 days after the termination date specified in the notice unless,

- (a) the tenant vacates the rental unit before that time; or
- (b) the landlord applies for an order terminating the tenancy and evicting the tenant before that time.

Exception

(2) Subsection (1) does not apply with respect to a notice based on a tenant's failure to pay rent.

5. Given that the Landlord's L2 application was filed on October 31, 2022, this means that there were in fact 31 days which passed between the termination date of September 30,

File Number: LTB-L-006452-23

2022 and the L2 filing date, and thus, the Landlord's N5 notice of termination is also defective and void based on section 46(1)(b).

L2 Other Claims – Utilities, Willful or Negligent Damage & Out of Pocket Costs

6. In addition to the errors mentioned above, it appeared that the Landlord intended to make claims related to utilities, willful or negligent damage and out of pocket costs related to interference with her reasonable enjoyment. However, each of these sections on the L2 application were incomplete, whether by way of not including particulars of what was being claimed or dollar figures. The Landlord in each of these three sections used language which suggested that she intended to amend her claims at a future date by using words like "to be added in bulk to this claim". However, a review of the evidence and disclosure uploaded into the Tribunals Ontario Portal shows that the Landlord did not amend her application after its initial filing. This is required according to the Board's Rules of Procedure which state in part:

Rule 15 - Amending Applications

15.1 A request to amend an application before the hearing must be:

- (a) in writing;
 - (b) served with the amended application to all other parties; and
 - (c) filed with the LTB with the amended application and a completed Certificate of Service.
7. While the Board does have discretion to allow a party to amend an application at the hearing under Rule 15.3, this requires a consideration of whether the amendment sought was requested as soon as the need was known, and whether there would be prejudice to any party in granting the amendment, among other factors. At the hearing, the Landlord asked for amendments to each of these sections to be granted, effectively asking to

present the entirety of her claim live, without the Tenants having an opportunity to prepare in advance. The Tenants in response indicated that they did not feel prepared to address the Landlord's claims due to not having had prior notice of the reasons and details.

8. Given the lack of sufficient details provided in the application, the prejudice that would result to the Tenants if these amendments were granted at the hearing, and the errors with the N5 Notice outlined above, I felt it appropriate to dismiss the entire application.

It is ordered that:

1. The Landlord's application is dismissed.

November 27, 2023

Date Issued

Madeline Ntoukas

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.