



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

**Citation:** Belisle v Marier, 2023 ONLTB 72066

**Date:** 2023-11-01

**File Number:** LTB-L-020795-23

**In the matter of:** 4472 Dill Lake Road  
Sudbury ON P3G0A5

**Between:** Charles Belisle Landlord

**And**

Heidi Marier Tenants  
Marc Marier

Charles Belisle (the 'Landlord') applied for an order to terminate the tenancy and evict Heidi Marier and Marc Marier (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another Tenants.

This application was heard by videoconference on May 11, 2023 and October 24, 2023. The Landlord, the Landlord's agent, J. Razik (JR), the Landlord's legal representative, L. FrappierBeaulieu, Student-At-Law J. Beaulieu, the Tenants and the Tenants' legal representative, Y. Pilon, attended the hearing.

**Preliminary Issues:**

Validity of 2<sup>nd</sup> N5 Notice

- On February 19, 2023, the Landlord gave the Tenants an N5 notice of termination. The reason identified in the first N5 Notice is substantial interference. In sum, the Notice contained the following allegations:
  - May 27, 2022 – The Tenants bullied the Landlord into repossessing the rental unit. The Tenants brought 10-15 friends.

- May 31, 2022 – The Landlord could not sell the house on the scheduled closing date because the Tenants hijacked the property.
  - February 18, 2023 – The Tenants denied access to the Landlord's realtor.
2. On February 26, 2023, the Landlord gave the Tenants a second N5 notice of termination for substantial interference. The second N5 Notice contained the above allegations and contained a new allegation, which can be summarized as follows:
    - February 20, 2023 – The Tenants denied access to the Landlord's realtor.
  3. Section 64 of the *Residential Tenancies Act, 2006* (the 'Act') provides that a landlord may give a notice of termination if the Tenants, the Tenants' guest or occupant substantially interfered with another tenant's or the landlord's reasonable enjoyment of the residential complex, and/or the lawful rights, privileges or interests.
  4. Section 68 of the Act states that a landlord may give a tenant a second N5 notice of termination if more than seven days but less than six months after the first notice was given to the tenant, an activity took place, conduct occurs, or a situation arises that constitutes grounds for an N5 notice of termination.
  5. The event in the second N5 took place on February 20, 2023, within seven days after the first N5 Notice was given to the Tenants. As the new incident did not take place more than seven days and less than six months after the first notice was given, the Landlord could not apply to terminate the tenancy based on the second N5 Notice pursuant to section 68 of the Act.

Request to Amend Application to proceed on 1<sup>st</sup> N5 Notice

6. After the parties were advised that the Landlord could not apply to terminate the tenancy based on the second N5 Notice pursuant to section 68 of the Act, I heard submissions on amending the application to proceed on the first N5 Notice. The application was filed within 30 days of the termination date of the first N5 Notice (as required by subsection 69(2)) and was not filed during the seven-day voiding period (as required by section 70 of the Act).
7. The Tenants objected to the amendment request. They submitted that because the Tenants received several N5 Notices within a short period of time with the same termination date, this was unduly confusing. Specifically, they relied on *Ball v. Metro Capital Property and Lockhurst*<sup>1</sup> for the position that if a notice of termination issued by a landlord is confusing to the degree that a reasonable person could not understand the precise actions or omissions that caused the landlord to pursue eviction, the Board would find it defective.

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<sup>1</sup> [2002] O.J. No. 5931 (Ont. Div. Ct.) ('*Ball*').

8. I find it appropriate to grant the Landlord's request to proceed on the first N5 Notice. While the Tenants submit that this would be unduly confusing pursuant to *Ball*, I do not find that it is. The first N5 Notice contains clear allegations for the Tenants to know the case to be met.

#### Adjournment Request

9. At the October 24, 2023 hearing, the Tenants requested an adjournment of the Landlord's application until after November 22, 2023. They state that their applications (LTB-T-07419422 and LTB-T-074169-22) are scheduled for an adjourned hearing before Vice Chair R. Lang who is seized. The Tenants submit that it would be procedurally unfair to hear the Landlord's application first when the Tenants' applications were filed before the Landlord's.

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The Tenants did not file a request to shorten time of their applications. The Landlord objected to the adjournment request.

10. I note that there was no request to shorten time to hear the Tenant applications. If there was a concern about procedural fairness, one would expect there to be efforts to have the Tenants' applications heard sooner. Moreover, I am not satisfied that hearing one application before another inherently creates unfairness. I also note that this application will not have any bearing on the outcome of the Tenants' applications. Therefore, the request to adjourn was denied.

#### **Determinations:**

11. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated on November 30, 2023.
12. The Tenants were in possession of the rental unit on the date the application was filed.

#### **N5 Notice of Termination**

#### **Substantial Interference**

#### **May 27, 2022 and May 31, 2022 Incidents**

13. The Landlord alleges that on May 27, 2022, the Tenants bullied the Landlord into repossessing the rental unit. The Tenants brought 10-15 friends. As a result, on May 31, 2023, the Landlord was unable to sell the house by the closing date.
14. The Landlord's agent, JR testified at the hearing. She is the Landlord's daughter and power of attorney. She testified that the Tenants abandoned the rental unit and as such, they changed the locks on May 20, 2022. The Tenants were in arrears of rent and their personal

belongings were not in the rental unit. On May 27, 2022, the Tenant came with several people to intimidate her father and brother and took back possession of the house. JR was not present for the incident.

15. H. Marier (HM) testified that she did not abandon the rental unit. Her and her family were not staying in the rental unit as of November 2021 because they went on vacation and the Landlord's were conducting repairs in the unit due to mould. They informed the Landlord when they were leaving and when they were coming back. When they discovered that they were locked out of the unit, they applied for an order from the LTB. They received a preservation interim order from the LTB issued May 21, 2022.
16. On May 27, 2022, HM attended the unit with the other named tenant and their two children, their legal representative, locksmith and police officers. They did not intimidate the Landlord or his son.
17. JR did not dispute that the Tenants obtained a preservation interim order from the LTB.
18. On a balance of probabilities, I do not find that the Tenants, the Tenants' guest or occupant substantially interfered with another tenant's or the Landlord's reasonable enjoyment of the residential complex, and/or the lawful rights, privileges or interests regarding the May 27 and May 31, 2022 incidents. I am satisfied that the Tenants lawfully attended the unit to regain possession. I base this on the uncontested evidence that the Tenants had an order from the Board to return to the rental unit. I am not satisfied that the people attending the unit were brought to intimidate the Landlord or his son or that they engaged in intimidating behaviour. In addition, as the Tenants were lawfully entitled to occupy the rental unit, I do not find that the Tenants caused the collapse of the sale of the house on May 31, 2022.

### **February 18, 2023 Incident**

19. The Landlord also alleges that the Tenants denied access to the Landlord's realtor on February 18, 2023. JR testified that 24-hour notice to entry was provided to the Tenants on February 16, 2023 via email and specified that the reason for entry was for the real estate agent to attend the unit and take photographs of the rental unit to place it up for sale. The period specified for entry was 1:30 p.m. to 2:30 p.m. She was advised by the realtor that the Tenants denied their entry.
20. HM confirmed her receipt of this notice. On February 18, 2023, the Landlord's realtor attended the rental unit and knocked on the door. HM answered the door and advised the realtor that she was not consenting to the taking of photographs. The realtor responded that he had to take photographs and HM replied she was not consenting. The realtor left.
21. The Tenants' position was that they did not receive proper notice to enter, and they did not block the realtor's access to the rental unit. Specifically, they state that they did not consent

to the receipt of notices via email and the realtor could have accessed the rental unit as the Tenants only took issue with photographs. Moreover, the Tenants objected to the taking of photographs because of previous conduct where photographs were allegedly taken of the Tenant's belongings.

22. I am satisfied that the Tenants received a valid notice of entry. The Tenants submit that they did not consent to receiving notices via email. However, Rule 3.3(c) of the Board's Rules of Procedure provide that a document may be served on a tenant by email if during the tenancy the tenant consented in writing to service via email and if it can be proven that the contents actually came to the attention of the tenant. While Rule 3.3(c) states there should both be consent in writing and proof that the contents came to the attention of the tenant, I find it appropriate to waive the consent requirement as it was undisputed that the Tenant received the notice to enter. There was no prejudice to the tenant in receiving this notice via email.
23. I am also satisfied that HM substantially interfered with the Landlord's rights and privileges by objecting to the realtor performing the duties set out in the notice to enter. The Landlord was permitted to take photographs of the Tenant's rental unit. Pursuant to *Arseneault v. Dogra*,<sup>2</sup> a landlord may take photographs of a rental unit for the purposes of marketing for sale in certain circumstances. In my view, the Landlord's intent for taking photographs was for marketing the unit and not to take photographs of the Tenant's personal belongings. While HM did not want photographs taken because of previous conduct where photographs

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<sup>2</sup> 2023 ONSC 763.

were taken of her belongings, I do not find that to be relevant to this notice of entry as this concern is speculative only.

24. Moreover, I do not find that it is reasonable to suggest that the realtor should have continued to enter the unit after HM advised that she was not consenting. In my view, there was no reason for the realtor to enter the unit if HM was not consenting to the taking of photos, the intended purpose of the entry.
25. The Tenants did not stop the conduct or activity or correct the omission within seven days after receiving the N5 notice of termination. JR testified that on February 20, 2023, the realtor advised her again the Tenant did not allow access. HM confirmed that she did not open the door on this date. Therefore, the Tenants did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

### **Relief from eviction**

26. 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 November 30, 2023 pursuant to subsection 83(1)(b) of the Act.

27. The Tenants submitted that since interim order LTB-L-020795-23-IN issued on June 7, 2023 requiring the Tenants not to deny the Landlord access to the rental unit provided proper notice of entry is given or in the case of an emergency, the Tenants have always permitted the Landlord access. Therefore, if I find that the Landlord's application should be granted, I should consider granting relief from eviction subject to a conditional order. HM testified that if the tenancy was terminated, she required at least one month to vacate.
28. The Landlord's position was that the tenancy could not continue. On May 25, 2023, the Landlord scheduled a showing of the rental unit. On this date, HM posted 'fact sheets' around the rental unit. She included information about the deficiencies in the rental unit and a pending lawsuit as against the Landlord for breach of conduct. She also had her sons videotape the realtor and potential buyers during the showing. HM did not deny what transpired on May 25, 2023. The Tenants replied that this event did not substantially impact the Landlord as they were able to sell the unit.
29. Based on the foregoing, I find it would not be unfair to postpone termination of the tenancy. While the Tenants have not engaged in similar behaviour since the interim order, the May 25, 2023 event is not a positive consideration. In my view, it would be unfair to the Landlord to deny eviction or impose a conditional order. However, to provide the Tenants with some time to organize their move, I find one month is reasonable in the circumstances.
30. The Tenants also raised that there are serious issues in the tenancy to warrant mandatory relief from eviction pursuant to section 83(3)(a). Specifically, HM testified there was mold in the rental unit that required the Tenants to vacate for a period.
31. In order to engage the mandatory refusal of eviction under subsection 83(3)(a), the Landlord must be in serious breach of the Act, and that breach must be continuing at the time of the hearing. Even if the allegations made by the Tenants are true, I am not satisfied that they constitute serious and continuing breaches of the Act. There is no evidence that the alleged mold is presently an issue, and no documentary evidence to support that the mold rises to the level of "serious" so as to trigger mandatory refusal of eviction.

**It is ordered that:**

1. The tenancy between the Landlord and Tenants is terminated on November 30, 2023.
2. If the unit is not vacated on or before November 30, 2023, then starting December 1, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after December 1, 2023.
4. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.

2023 ONLTB 72066 (CanLII)

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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 Tenants expires on June 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.