



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

**Citation:** Wang v Colett, 2023 ONLTB 67217

**Date:** 2023-10-05

**File Number:** LTB-L-038771-22

**In the matter of:** 160 TAYLOR DR  
BARRIE ON L4N8L1

**Between:** Lingzhi Wang Landlord

**And**

Sherry Colett Tenant  
Katrina Hope

Lingzhi Wang (the 'Landlord') applied for an order to terminate the tenancy and evict Sherry Colett and Katrina Hope (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe. This is the L1 Application.

The Landlord also applied for an order to terminate the tenancy and evict the Tenants because the Tenants have been persistently late in paying the Tenants' rent. This is the L2 Application.

This application was heard by videoconference on July 10, 2023.

The Landlord, and the Landlord's Legal Representative, Elaine Page, attended the hearing.

As of 9:31 a.m., the Tenants were 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:**

L1 Application

1. At the hearing, the Landlord requested consent of the Board to withdraw their application.
2. In accordance with subsection 200(4) of the Act, I consent to the withdrawal of the application.

L2 Application

3. On December 2, 2022, the Landlord gave the Tenants an N8 notice of termination ('N8 Notice').

**File Number:** LTB-L-038771-22

4. Notwithstanding that the Tenants did not attend the hearing the Landlord is required to establish that: (a) that the N8 is valid; and (b) that the Tenants were persistently late in paying rent.
5. At the outset of the hearing, I raised my concern that the N8 Notice did not satisfy the requirements of subsection 43(2) of the Residential Tenancies Act, 2006 (the 'Act'), which provides, in part:

**43 (2) If the notice is given by a landlord, it shall also set out the reasons and details respecting the termination and inform the tenant that, ...** (emphasis added)

6. The N8 Notice that was served on the Tenants provides:

Rent is due, in full, on the 1<sup>st</sup> of each month

Rent has been late every month in 2021 and every month in 2022

7. In *Ball v Metro Capital Management Inc.* [[2002] OJ No 5931 (Div Crt)] the Divisional Court considered subsection 43(2) of the Act and found that the purposes of requiring that a landlord provide reasons and details on a notice given pursuant to the Act was to:
  - (a) allow the tenant to be in a position to know the case to be met before the Board;
  - (b) allow the tenant to decide whether or not to dispute the allegations made by the landlord; and, in the case of a voidable notice,
  - (c) allow the tenant to stop the conduct or activity or correct the omission. The Divisional Court found that, to be in compliance with subsection 43(2), a notice should include dates and times of the alleged conduct, together with a detailed description of the alleged conduct. [*Ball v Metro Capital Management Inc.* [2002] OJ No 5931 (Div Crt), paras 10 and 12.]
8. While *Ball* dealt with a notice of termination under section 64 of the Act, I find that the test established by the Divisional Court applies equally to notices of termination given pursuant to other provisions of the Act, including a notice given pursuant to subsection 58(1) based on allegations that a tenant has persistently failed to pay rent on the date that it becomes due. Subsection 43(2) applies to all notices delivered pursuant to the Act and as noted below, the Board has applied *Ball* to notices delivered pursuant to 58(1).
9. Applying the test in *Ball*, I find that a N8 Notice that says only that rent is due on the first of the month and that the Tenants have been late in paying rent for the years of 2021 and 2022 does not satisfy the requirements of subsection 43(2). As noted by Vice-Chair Carey in TEL85488-17:

....at a minimum, a notice under s. 58(1)(a) must inform the tenant that the landlord is asserting the tenant repeatedly pays the rent late and provide sufficient details of those late payments so the tenant knows the case to be met and can decide whether or not to dispute the allegations before the Board. [TEL-85488-17, 2017 CanLII 93838 (ON LTB), para 12. See also TEL-05853-19, 2020 CanLII 61355 (ON LTB), TEL-85490-17, 2017 CanLII 94114 (ON LTB), TEL-91067-18, 2018 CanLII 113137 (ON LTB)]

**File Number:** LTB-L-038771-22

10. I find that to satisfy the requirements of subsection 43(2) and *Ball*, a N8 Notice must provide the date on which the Landlord asserts that rent was actually paid in the months that the Landlord asserts that Tenants paid the rent late. In my view, that information is necessary for the Tenants to be in a position to know the case to be met before the Board and to decide whether or not to dispute the allegations made by the Landlord in support of the request that the tenancy be terminated and the Tenants evicted.
11. Based on the foregoing, I find that the N8 Notice served by the Landlord does not satisfy the requirements of subsection 43(2) of the Act and, as a result, this application must be dismissed.

**It is ordered that:**

**L1 Application:**

1. The Landlord's is dismissed.

**L2 Application:**

2. The Landlord's is dismissed.

**October 5, 2023**

**Date Issued**

\_\_\_\_\_  
Susan Priest

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.