



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

**Citation:** Homestead Land Holdings Limited v Garbe, 2023 ONLTB 65095

**Date:** 2023-10-04

**File Number:** LTB-L-052766-22  
LTB-L-036643-23

**In the matter of:** 107, 1148 AFTON DR  
SARNIA ON N7S5B7

**Between:** Homestead Land Holdings Limited Landlord

**And**

Steven Garbe Tenant

2023 ONLTB 65095 (CanLII)

Homestead Land Holdings Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Steven Garbe (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 Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date (LTB-L-052766-22).

The Landlord also applied for an order to terminate the tenancy and evict 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 Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date (LTB-L-036643-23).

These applications were heard together by videoconference on August 23, 2023.

The Landlord's Legal Representative, T. Rose, and the Tenant attended the hearing.

The following witnesses testified at the hearing:

Gord Murphy (GM) – Building Manager- on behalf of Landlord

Shannon Shepherd (SS) – Tenant's Girlfriend- on behalf of the Tenant

**Determinations:**

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1. The Landlord served two Notices to End Tenancy for Interfering with Others, Damage or Overcrowding (N5 Notice) alleging that the Tenant substantially interfered with another tenant's or the Landlord's reasonable enjoyment of the residential complex, and/or lawful rights, privileges, or interests pursuant to section 64 of the *Residential Tenancies Act, 2006* (the 'Act').
2. Section 64 of the Act states:
  - (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.
  - (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. 2006, c. 17, s. 64 (2).
  - (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.

#### First N5 Notice

3. The first N5 Notice was served on the Tenant on August 22, 2022 and provided a termination date of September 11, 2022. I am satisfied that the first N5 Notice was properly served in accordance with section 64 of the Act.
4. The allegations in the N5 Notice were:
  - On July 29, 2022, the unit was scheduled for a bed bug spray treatment and unit was not fully prepared, treatment rescheduled
  - On August 12, 2022, the unit was again scheduled for treatment/inspection and entry/access was refused, treatment could not be completed.
  - The Tenant is in breach of the terms of section 48 of the Residential Tenancy Agreement by failing to keep the unit free from pests, and if treatment is required, the Tenant shall carry out all protocols for preparation of the unit by the pest control contractor. As well, the Tenant shall not refuse entry into the unit by the Landlord or pest control contractor.

- The Tenant's ongoing lack of cooperation with treatment is impeding the eradication of bed bug activity, treatment is rescheduled for August 26, 2022.
5. There was no dispute that the Landlord provided written notice of another treatment scheduled for August 26, 2022 and that the Tenant's unit was not prepared which resulted in no treatment. Therefore, I find that the Tenant did not correct the issue within seven (7) days after receiving the N5 Notice.

### Second N5 Notice

6. The second non-voidable (N5 Notice) was served on the Tenant on September 2, 2022 and provided a termination date of September 16, 2022.
7. The second N5 Notice was served pursuant to section 68 of the Act which states:
- (1) A landlord may give a tenant notice of termination of the tenancy if,
    - (a) a notice of termination was given to the tenant under section 62, 64 or 67; and
    - (b) more than seven days but less than six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct occurs or a situation arises that constitutes grounds for a notice of termination under section 60, 61, 62, 64 or 67, other than an activity, conduct or a situation that is described in subsection 61 (1) and that involves an illegal act, trade, business or occupation described in clause 61 (2) (a). 2006, c. 17, s. 68 (1); 2017, c. 13, s. 12.
  - (2) The notice under this section shall set out the date it is to be effective and that date shall not be earlier than the 14th day after the notice is given.
8. The allegations in the second N5 Notice were:
- The pest control contractor was unable to complete treatment due to the clutter and accumulation of items in the unit. On August 29, 2022, you were issued a general housekeeping letter advising that the unit is in violation of section E of your Tenancy Agreement.
  - On August 30, 2022, although notice of inspection was served, you stated that it was not received and you were not ready. The inspection was rescheduled to September 1, 2022.
  - On September 1, 2022, an inspection of the unit was completed, there is an over accumulation of items and a strong odour of garbage and smoke, access to the bedroom was refused as you said you didn't have time to tidy up and SS was sleeping.
  - September 9, 2022, a follow up inspection was scheduled and notice of entry provided, as per order SWL-50052-21 issued February 17, 2022, you shall not permit the amount of possessions in your unit to rise to a level of 4 or more on the

International OCD Foundation's "Clutter Image Rating." The current condition of your living room and dining room is approaching a level 5 to 6 on the scale.

9. The alleged conduct occurred more than seven days after the first N5 Notice was served on the Tenant on August 22, 2022. Therefore, the Landlord was entitled to serve the second N5 Notice.
10. Based on the evidence before me, I am satisfied that the accumulation of items in the Tenant's unit and his failure to cooperate with the Landlord by preparing his unit for treatment of bed bugs has substantially interfered with other tenants and the Landlord's reasonable enjoyment of the residential complex. The cooperation of the Tenant and preparation of the rental unit for pest control treatment is necessary to prevent pests in the residential complex.
11. By failing to provide access when legal notice is provided and failing to maintain the unit in a state of cleanliness amounts to breaches of the signed Tenancy Agreement and the Act. Therefore, this conduct substantially interferes with the Landlord's lawful rights, privileges and interests.
12. GM stated that one of the Tenant's guests told his wife that they were bitten and saw bed bugs while visiting the Tenant. GM stated that treatments were scheduled for July 29, 2022 and August 12, 2022 and Tenant refused access to the pest control contractor on both dates. GM stated that the treatment was rescheduled to August 26, 2022 at which time they discovered that complete treatment will not be possible due to the amount of clutter from the accumulation of items in the unit.
13. On September 1, 2022, GM stated that the Landlord was allowed to inspect the unit. On this date, GM took photos of the living room, dining room and kitchen. He stated he was not able to access the bedroom as the Tenant advised that SS was sleeping. GM stated that another notice of inspection was given for September 9, 2022 and he was able to complete the inspection on this date. GM submitted and relied on a number of photos showing the condition of the rental unit on September 1<sup>st</sup> and 9<sup>th</sup>, 2022.
14. The Tenant did not dispute the current state of his unit and acknowledged that he needs to remove items and declutter. He requested additional time to do this.
15. SS, who resides in the unit with the Tenant, stated that they have complied with the Landlord's notices of entry but acknowledged that the unit was prepared for treatment. SS stated that the preparation sheet was confusing as it said "do not dispose of any furniture/mattresses" but they need to get rid of some of their belongings to lessen the clutter in the unit. SS also stated that now that they are aware that they can remove items, they just need time to do so and once done will be able to prepare the unit for treatment. SS pointed out that some of the Landlord's photos show that they have packed up and placed clean items in bags as required on the preparation sheet.

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16. On April 26, 2023, the Landlord served the Tenant with an N5 Notice alleging that the Tenant substantially interfered with another tenant's or the Landlord's reasonable

enjoyment of the residential complex, and/or lawful rights, privileges, or interests pursuant to section pursuant to section 64 of the Act.

17. The allegations in the N5 Notice were:

- On March 2, 2023, you were issued a letter asking you to remove the illegal patio heater from your patio to date this still has not been done. Propane cylinders are prohibited from patio areas as they are a fire hazard. Bicycles and other debris are not to be stored in this area. As per your Lease Agreement in the Rules and Regulations, no storage of barbeques or bicycles. Please remove the propane cylinder and bicycles immediately.

18. There was no dispute that the Tenants did not remove the patio heater or their bicycles within 7 days of receiving the N5 Notice.
19. Based on the evidence before me, I am satisfied that the Tenant's failure to remove these items from their balcony has substantially interfered with the Landlord's their lawful rights, privileges and interests. These items are not permitted on the balcony in accordance with paragraph 26 of the Rules and Regulations of his Tenancy Agreement. The patio heater has a propane tank and this presents a potential hazard when stored on the balcony.
20. The Tenant's unit is a ground floor unit with a balcony. GM stated and relied on photos showing a number of belongings on the Tenant's balcony including a large patio heater and bicycles which is against the Tenancy Agreement. GM stated that the patio heater has a propane tank and any heating devices are not permitted on the balcony. GM also stated that the building has a bicycle rack where tenants can chain/store their bicycles.
21. SS did not dispute that the patio heater was on the balcony for some time, however she stated it has been removed now. SS also stated that there was no propane in the heater. SS stated that they had a bicycle stolen so they chain them to their balcony. SS confirmed that they can remove the items from the balcony but just need some additional time.
22. Based on the Monthly rent, the daily compensation is \$29.49. This amount is calculated as follows:  $\$897.13 \times 12$ , divided by 365 days.
23. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
24. The Landlord collected a rent deposit of \$945.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$27.12 is owing to the Tenant for the period from July 1, 2022 to August 23, 2023.
25. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

#### Relief From Eviction

26. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act 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.

27. The Landlord's Legal Representative requested termination of tenancy. She submitted that the parties were previously before the Board in January 2022 and the Tenant was under a conditional order for six months to maintain the rental unit in a state of ordinary cleanliness and co-operate and allow periodic access to the rental unit when given written notice in accordance with the Act. She submitted that the Tenant had everything cleaned up then and since August 2022 there is again an accumulation of excess items in the unit which has continued for the last year. She also submitted that the Tenant continues to not cooperate with the Landlord by providing access/entry to the unit.
28. SS stated that it's not a re-accumulation of items. She stated that they have a storage unit because they moved from a place that was about three times the size of this unit. They have been slowly bringing things to the apartment from the storage unit and going through things to get rid of what they don't need. SS stated that as long as it is now okay for her to get rid of their belongings, they need about 10 days to remove any excess items. SS also confirmed that they will be able to pack and prepare for any treatment by the pest control contractor after the excess belongings have been removed.
29. There was no dispute that the current condition of the rental unit is not in a state of ordinary cleanliness. The Tenant receives ODSP for a brain injury and has lived in the unit since 2018. The Tenant has cleaned up the unit in the past and just requires additional time to do so again. Therefore, in these circumstances I find that it would not be unfair to grant a conditional order. Since this is the second conditional order given to the Tenant, the Tenant will need to comply with the terms in order to continue the tenancy. If the Tenant does not comply with the conditions in the order, the Landlord can file without notice to the Tenant for termination of the tenancy.

**It is ordered that:**

1. On or before October 15, 2023, the Tenant shall ensure that the rental unit is in a state of ordinary cleanliness and free of clutter and excess items.
2. From October 16, 2023 onward, the Tenant shall maintain the rental unit in a state of ordinary cleanliness and free of clutter and excess items.
3. When requested by written notice, the Tenant shall ensure that the rental unit is thoroughly prepared for any necessary pest control treatment.
4. The Tenant shall not store any heaters, propane tanks, or bicycles on the balcony.
5. The Tenant shall, upon lawful notice by the Landlord, allow access to the rental unit to the Landlord's Agents and/or contractors for the purpose of inspections, treatments or other maintenance concerns.
6. If the Tenant fails to comply with the conditions set out in paragraphs 1, 2, 3, 4, or 5 of this order, the Landlord may apply under section 78 of 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.
7. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.

8. If the Tenant does not pay the Landlord the full amount owing on or before October 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 1, 2023 at 7.00% annually on the balance outstanding.

**October 4, 2023**  
**Date Issued**

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Lisa Del Vecchio  
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.