



Order under Section 69 Residential Tenancies Act, 2006

Citation: WALLOND v BROADBENT, 2023 ONLTB 65587

Date: 2023-10-03

File Number: LTB-L-004023-23

In the matter of: UNIT 5, 16 DEVIL LAKE ROAD
SOUTH FRONTENAC TOWNSHIP ON K0G1X0

Between: DAVID WALLOND Landlord

And

JUDY BROADBENT Tenant

DAVID WALLOND (the 'Landlord') applied for an order to terminate the tenancy and evict JUDY BROADBENT (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.

This application was heard by videoconference on September 21, 2023.

The Landlord and the Tenant attended the hearing. The Tenant was represented by Linda Tranter.

Determinations:

1. The Landlord's L2 application is based on a second N5 notice of termination which was served to the Tenant on August 8, 2022 with a termination date of August 31, 2022 pursuant to subsection 68(1) of the Residential Tenancies Act, 2006.
2. In order to serve a second N5 notice of termination, the Landlord must have served a valid first N5 notice of termination within six months before; the Landlord served this notice on March 5, 2022 with a termination date of March 25, 2022.

7. In *Gatien/Brown v. Bombaci*, 2019 ONSC 2679 the Courts found at paragraphs 9 and 10 the following:

[9] The purpose of the Notice is to communicate to the tenants the case to be met and the options to void the Notice. When this Notice is read as a whole, including the appendices and page 3 of the form advising the tenant what to do to avoid eviction, it conveyed the necessary information to the tenants and was compliant with the Act.

[10] Moreover, s. 62(2)(c) does not require the landlord to choose between two options: pay to repair or pay to replace. It is in the tenants' interest to be given all the options: do the repairs themselves, or pay for the repairs, or pay for replacement. Here the landlord had provided detailed information about the tenants' options to remedy the situation.

8. In that case under Reason 2 (willful or negligent damage) on the N5, the Landlord failed to fill in the bullet beside the statement that the Tenants had 7 days to correct the damage by paying amounts to repair or replace the damaged property. However, the Landlord had filled in the amounts payable to repair or replace the property. The amount indicated that the Tenants must pay to the Landlord to repair the damaged property was different than the amount indicated that the Tenants must pay to replace the damaged property.
9. The Board had found that the N5 Notice of Termination was compliant with the Act because a reasonable person in the Tenants' position would understand from reading the form that he or she had 7 days to act to repair or pay for the damage. The Court found that this was a reasonable conclusion.
10. However, in the case before the Board, while the Landlord also missed filling the bullet beside the statement that the Tenant had 7 days to correct their behaviour, the particulars on the notice itself are unclear of what needs to be done to remedy the behaviour – is it to stop the noise that emanates from the rental unit? is it to stop asking others for alcohol?; is it to stop banging on the doors of others?; is it to stop letting Chris into the unit?; is it to stop other tenants from threatening to move out?; or is it all of these behaviours?
11. Further, by filling the bullet beside damages, without having any allegation of damages in the particulars itself or identifying an amount to pay, it is unclear what action, if any, the Tenant must take to void the notice.
12. Thus, I do not find that it is unreasonable for the Tenant to be confused from this notice.
13. Given the above, I do not find the Landlord's first N5 notice complies with subsections 64(1) and 62(1) and is therefore defective; since the first N5 is invalid, it cannot be relied upon for the second N5 and the Landlord's application must be dismissed.

14. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

**October 3, 2023 Date
Issued**

Sonia Anwar-Ali
Member, Landlord and Tenant Board

1.

The Landlord's application is dismissed.

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.