



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

**Citation:** Manitoulin-Sudbury District Services Board v Kitchen, 2023 ONLTB 65171

**Date:** 2023-10-03

**File Number:** LTB-L-043653-23

**In the matter of:** 207, 70 BARBER ST  
ESPANOLA ON P5E1E6

**Between:** Manitoulin-Sudbury District Services Board Landlord

**And**

Janessa Kitchen Tenant

Manitoulin-Sudbury District Services Board (the 'Landlord') applied for an order to terminate the tenancy and evict Janessa Kitchen (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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises;
- the number of persons living in the unit on a continuing basis is more than permitted by health, safety or housing standards.

This application was heard by videoconference on September 19, 2023.

Only the Landlord's Representative Kristian Thorne attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the conditional order requested by the Landlord is granted.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Landlord served the Tenant with a first, voidable N5 notice of termination on March 29, 2023 deemed served that date. The notice alleges substantial interference, undue damages, and overcrowding. More specifically, the notice claims on March 19, 2023 an after hours call was placed to the Landlord regarding a leak from the Tenant's unit to the unit below them. Upon investigation, it was determined that the leak was a result of an unreported plugged sink in the rental unit and cigarette butts were ultimately found in the drain. The Landlord also claimed \$1,623.14 for damages to repair the plugged sink. Finally, the notice alleges the Tenant has a guest which constitutes overcrowding. The

void period for the N5 notice was from March 20-26. The termination date was April 19, 2023.

4. The Landlord served the Tenant with a second, non-voidable N5 notice of termination on April 24, 2023 deemed served on April 29, 2023. It also alleges substantial interference and overcrowding, but not damages. At the hearing, I dismissed the overcrowding allegation in the second N5 notice as it was not new conduct as it involved the same occupant and therefore the Landlord should have applied for this allegation based on the first N5 notice or alternatively served another first N5 notice for this allegation rather than a second without a void period.
5. With respect to the claim of substantial interference, the second N5 alleges the Tenant continues to smoke cigarettes in their rental unit and on the balcony which is prohibited by the Lease Agreement as this is a non-smoking unit. The date of this allegation was April 24, 2023 and there was a complaint received that the Tenant continues to throw cigarette butts off their balcony into the yard.
6. The Landlord also submitted photos to establish the smoking issues (Landlord Exhibit 1 at pp. 28-30; Landlord Exhibit 2 at p. 1). They show a substantial amount of cigarette butts in a yard area allegedly below the Tenant's unit and cigarette butts in the sink of the Tenant's unit.
7. I am satisfied that this uncontested evidence establishes that the Tenant has been smoking in the rental unit and the residential complex. This conduct has substantially interfered with other tenants' reasonable enjoyment of the premises and has also substantially interfered with the Landlord's right to a smoke-free unit under the lease agreement which was also submitted (Landlord Exhibit 3 at s. 22).
8. The second N5 notice also alleged noise complaints have been made regarding the Tenant and that other tenants are kept awake at night.
9. The Landlord submitted a series of complaints documented against the Tenant regarding noise issues (Landlord Exhibit 1). While most of them are dated after the second N5 notice was served, there are two noise complaints regarding the Tenant on April 24, 2023 the same day the second N5 was served (at pp. 12-13, 20-21). The first complaint states "the [other tenant] says that for the past 4 nights Janessa Kitchen in unit 207 is making excessive noise between 2-5am. The noise is being made by more than 1 person. The noise is keeping her awake." The second complaint states "[the other tenant] was in to let us know that Janessa Kitchen (unit 207) lets everyone in at all hours of the night . . . they are loud at all hours of the night. The last encounter was Saturday night."
10. I am satisfied that this uncontested evidence establishes that there is excessive noise coming from the rental unit and this conduct has substantially interfered with other tenants' reasonable enjoyment of the premises under s. 64(1) of the *Residential Tenancies Act*, 2006 (the "Act").
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. 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. At the hearing, the Landlord requested the conditional order below.

**It is ordered that:**

1. For a period of one year from October 3, 2023 to October 2, 2024, the Tenant, their guests and occupants shall not smoke in the rental unit, on the balcony or patio, or within 5-9 metres of any door, window, or air intake.
2. For a period of one year from October 3, 2023 to October 2, 2024, the Tenant, their guests and occupants shall refrain from making excessively loud noise that unreasonably interferes with other tenants.
3. The Landlord shall, before applying under section 78 for an alleged breach of paragraph 2, provide the Tenant written notice of the breach with dates and details of the incidents and 5 days to correct the issues. The Landlord must only provide written notice for correction one time, meaning if the issues are corrected but then occur again the Landlord may apply immediately under section 78. This condition only applies to paragraph 2 for noise, not paragraph 1 for smoking.
4. If the Tenant breaches paragraphs 1 or 2 of this order, after complying with paragraph 3, the Landlord may without notice to the Tenant apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant.
5. The Tenant shall pay the application fee of \$186.00 according to the following schedule:
  - \$31.00 paid on November 1, 2023
  - \$31.00 paid on December 1, 2023
  - \$31.00 paid on January 1, 2024
  - \$31.00 paid on February 1, 2024
  - \$31.00 paid on March 1, 2024
  - \$31.00 paid on April 1, 2024
6. If the Tenant does not pay the Landlord the application fee according to the above schedule, the Tenant will start to owe interest. This will be simple interest calculated from the date of the breach at 7.00% annually on the balance outstanding. Section 78 does not apply to these payments of the application fee.

**October 3, 2023**

**Date Issued**

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Elan Shemtov

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.