



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

**Citation:** Bhalla v Milligan, 2023 ONLTB 34262

**Date:** 2023-08-23

**File Number:** LTB-L-024775-22

**In the matter of:** 3, 300 BALMORAL AVE N Hamilton  
ON L8L7S4

**Between:** Subash Bhalla Landlord

**And**

Terrence Milligan Tenant

Subash Bhalla (the 'Landlord') applied for an order to terminate the tenancy and evict Terrence Milligan (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.

This application was heard by videoconference on April 5, 2023.

Only the Landlord, Landlord's Legal Representative E. Alexander, Landlord's witness Jonathan Myska attended the hearing.

As of 10:49 a.m., the Tenant was 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:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated on September 3, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On March 28, 2022, the Landlord gave the Tenant an N5 notice of termination deemed served the same day. The date of termination on the notice was April 18, 2022. The notice of termination contains the following allegations:
  - Jan 15, 2022: Another tenant complained of you making noise till 3:30 a.m.
  - Mar 22, 2022: Same tenant complained of disturbance from your apartment
  - Mar 23, 2022: Same tenant complaining of excessive noise from your apartment till 3 a.m.
  - June 26, 2020: Another tenant reported that you refused entry to the fumigator summoned by the Landlord and that you apparently have not provided the Landlord with a key to the apartment. This same tenant is complaining of excessive noise from your apartment.
  - November 19, 2021: The Landlord and Tenant Board issued an order for you to pay the Landlord \$304.49 and you have not done it.
4. The residential complex is a house with 4 rental units. Jonathan Myska is another tenant of the residential complex. He lives in a unit below the rental unit. Mr. Myska was the tenant who complained of excessive noise from the rental unit in January and March 2022. He testified that he works nights and leaves home in the afternoon and returns from work at 2 a.m. That is when he hears loud music and yelling from the rental unit and is unable to sleep. He testified that he was the tenant who complained about the Tenant's behaviour on January 15, 2022 and March 22, 23 of 2022 and advised the Board that they were as described in the N5.
5. He testified that the Tenant when he yells can be ranting on his own and sometimes there are other people who he is arguing with. He argues with other tenants in the residential complex including himself.
6. Mr. Myska also testified that after the notice was served on the Tenant, on March 29 and March 30, 2022 particularly, the Tenant continued with the loud music and yelling, and it has continued since then. In the last few weeks leading to the hearing day, he has continued to hear loud yelling, loud music, and stomping from the rental unit on a regular basis. The Tenant had a heated argument with another tenant yesterday itself. He fights with everyone in the building and utters racial slurs too.
7. Mr. Myska also told the Landlord about the Tenant refusing entry to the fumigator on June 26, 2020. He said there were multiple times this happened, but this was a specific incident he remembers clearly. All the tenants were made aware of the fumigation prior to

the date. When the fumigator arrived, the Tenant locked himself in the rental unit and he refused entry to the fumigator and also did not prepare the unit for fumigation. Therefore, the entire building could not be fumigated that day. The fumigator had to come back another day and that day too he just up and left without preparing the unit. On the day of that incident, they found out that the Tenant has changed the locks of the rental unit without notice and has not given the Landlord a key even after the Landlord has requested it multiple times.

8. The Landlord testified that he has owned the residential complex for twenty-two years and the Tenant has lived there for four to five years. He also testified that the Tenant has still not paid money ordered in a previous the Landlord and Tenant Board order.

#### Analysis

9. Based on the Landlord's uncontested evidence, I am satisfied on a balance of probabilities that the behaviour of the Tenant has substantially interfered with other tenants' reasonable enjoyment of the residential complex. The Tenant has been making considerable noise in the residential complex at odd hours even after the N5. The Landlord testified that the complaints have not stopped since the N5 was served, and the Tenant has been rude and yelled at him multiple times as well. The Tenant has not made any change to his behaviour based on the uncontested evidence from the Landlord's witness and the Landlord himself. The Tenant's refusal to prepare the unit for fumigation also disrupts the lives of other tenants in the residential complex who are affected by it substantially.
10. The Tenant did not stop the conduct or activity within seven days after receiving the N5 notice of termination. J. Myska has testified that between March 28, 2022 and April 4, 2022 the Tenant has himself and his guests who yell, scream, or make excessive noise at odd hours during the night. In fact, he testified that the behaviour has consistently worsened over time and there has never been a seven-day period when the interference has stopped. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (the "Act").
11. However, the Tenant's failure to pay an amount already ordered by the Board in a prior order does not constitute substantial interference. The Landlord can seek to enforce the prior Board order in the usual manner if the Tenant fails to make the ordered payment.

#### Request for daily compensation

12. The Landlord testified that the Tenant has been up to date with his rent so there is no daily compensation owing by the Tenant as of the hearing date.
13. Based on the Monthly rent, the daily compensation is \$22.19. This amount is calculated as follows: \$675.00 x 12, divided by 365 days.

14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. There is no last month's rent deposit.

Section 83 considerations

16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant did not attend the hearing to present any evidence or submissions in support of granting relief from eviction.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before September 3, 2022.
2. If the unit is not vacated on or before September 3, 2023, then starting September 4, 2023, the Landlord 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 Landlord on or after September 4, 2023.
4. The Tenant shall pay the Landlord compensation of \$27.95 per day for the use of the unit starting April 5, 2023 until the date the Tenant moves out of the unit. If the Tenant has made rent payments to the Landlord after April 5, 2023 those must be deducted from the amount due.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing on or before September 3, 2022, the Tenant will start to owe interest. This will be simple interest calculated from September 4, 2022 at 6.00% annually on the balance outstanding.

**August 23, 2023**

**Date Issued**

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Sheena Brar

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,  
Toronto ON M7A 2G6

**File Number:** LTB-L-024775-22

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 Tenant expires on March 4, 2023 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.

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