



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

**Citation:** BATHURST- VAUGHAN MALL LIMITED COB ST CLAIR PLACE v Muczynska, 2023  
ONLTB 56684

**Date:** 2023-08-21

**File Number:** LTB-L-041582-22

**In the matter of:** 708, 21 VAUGHAN RD  
TORONTO ON M6G2N2

**Between:** BATHURST- VAUGHAN MALL LIMITED COB ST CLAIR PLACE Landlord

**And**

Zofia Muczynska

Tenant

BATHURST- VAUGHAN MALL LIMITED COB ST CLAIR PLACE (the 'Landlord') applied for an order to terminate the tenancy and evict Zofia Muczynska (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 August 8, 2023.

Only the Landlord's Legal Representative, M. Ciobotaru, the Landlord's Agent, L. Litvack, and the Landlord's Property Manager, M. Clappa, attended the hearing.

As of 12:32 p.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:**

- On June 27, 2022, the Landlord gave the Tenant an N5 Notice of termination ("Notice") deemed served on July 2, 2022.
- The Notice alleges that the Tenant has substantially interfered with another tenant's reasonable enjoyment of the residential complex and substantially interfered with the Landlord's lawful rights and interests by:
  - yelling and banging on the balcony divider or railings regularly and at night on July 10, 2021, July 11, 2021, July 27, 2021, January 31, 2022, March 21, 2022, May 5, 2022, and June 8, 2022;

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- knocking on other tenant's doors and screaming on July 17, 2021 and July 30, 2021;
  - leaving garbage at other tenants' doors on July 17, 2021;
  - using a golf club to bang on other tenant's doors, March 11, 2022;
  - using a golf club to damage the video camera in the hallway, on March 11, 2022 and March 27, 2022 ;
  - excessive smoking in the Tenant's unit on March 21, 2022 and June 8, 2022;
  - removing an envelope with other tenants' cheques from the Landlord's office on or about July 7, 2021;
  - adding/changing entry unit door locks; and
  - denying entry to the Landlord and/or the Landlord's contractors on March 24, 2022, March 29, 2022 and May 10, 2022.
3. The Landlord's property Manager, M. Clappa, testified that on July 7, 2021, a police constable attended the Landlord's office with the Tenant and advised that the Tenant was found in a neighbour's yard carrying a large envelope containing rent cheques from the Landlord's neighbouring residential complex. M. Clappa testified that during this interaction, the Tenant became belligerent and started yelling, and the officer struggled to control the situation.
  4. M. Clappa also testified and provided into evidence a number of written complaints that the Landlord received from other tenants about disturbances from the Tenant. These disturbances included the Tenant yelling and screaming at night, the Tenant banging on the metal balcony dividers a night, the Tenant knocking on other tenants' doors at night, the Tenant putting garbage at other tenants' doors, and a constant odour of cigarette smoke emanating from the Tenant's unit.
  5. M. Clappa also testified and provided video footage into evidence of the Tenant using a golf club to damage the camera on two separate occasions, March 11, 2022 and March 27, 2022. The video footage also showed the Tenant carrying a golf club and entering the stairwell. The video camera had to be repaired on both occasions.
  6. M. Clappa further testified and provided copies of Notices of Entry the Landlord provided to the Tenant to conduct inspections of the Tenant's unit, namely March 24, 2022, March 29, 2022, and May 10, 2022. M. Clappa testified that the Landlord was not able to gain entry on these dates as the Tenant has added another lock on the entry door and will not open the door when asked. M. Clappa testified that the Tenant just screams for them to go away.
  7. Prior to serving the N5 Notice, M. Clappa testified that she served numerous letters to the Tenant regarding these various disturbances and requested compliance. M. Clappa also testified that the Tenant refused to communicate with the Landlord or stop the conduct which led to the Notice being served.
  8. Based on the uncontested evidence before me, I am satisfied that the Tenant's on-going disturbances substantially interferes with other tenants' reasonable enjoyment of the residential complex. Other tenants in the residential complex have and continue to complain to the Landlord about the Tenant's conduct and disturbances listed above both verbally and in writing, as well some tenants have vacated their rental unit because of these disturbances.

9. Based on the uncontested evidence before me, I am also satisfied that the Tenant's conduct, namely her refusal to allow the Landlord access to her rental unit, substantially interferes with the Landlord's lawful rights and interests. The Landlord has not been able to conduct any inspection of the rental unit including mandatory annual inspections of fire alarm devices for over two years.
10. Based on the uncontested evidence before me, I am also satisfied that the Tenant did not stop the conduct or activity within seven days after receiving the N5 notice of termination. The Landlord's Property Manager, M. Clappa, testified that the Landlord received a written complaint that on July 5, 2022, the Tenant made repetitive banging noises around 1:00 a.m. Therefore, I find that the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
11. Based on the Monthly rent, the daily compensation is \$40.68. This amount is calculated as follows: \$1,237.23 x 12, divided by 365 days.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Landlord collected a rent deposit of \$1,737.23 from the Tenant and this deposit is still being held by the Landlord.
14. 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.
15. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until September 30, 2023 pursuant to subsection 83(1)(b) of the Act.
16. M. Clappa testified that the Tenant continues to cause these disturbances every week by banging on the metal balcony dividers and yelling from her balcony, and the Tenant has continued to deny entry into her unit by the Landlord or the Landlord's contractors. M. Clappa also testified that the Landlord has serious safety concerns as they have been unable to complete smoke alarm testing in the Tenant's unit for the last two years
17. M. Clappa stated that she has attempted to communicate and engage the Tenant both in person and in writing to discuss these issues, however the Tenant will not respond in any way. M. Clappa also stated that she reached out to the City of Toronto (who provides a rent subsidy to the Tenant) and was advised that if the Tenant won't speak with the Landlord, then there is nothing they can do. M. Clappa further stated that she brought in Community Police Officers to assist with communicating with the Tenant, however the Tenant just screamed at them and since there was no illegal activity at the time there was nothing they could do.
18. Given that the Tenant is unwilling to communicate or cooperate with the Landlord in anyway, I find that it would not be fair or prudent to impose a conditional order on the Tenant. However, given this is a long standing tenancy and the Landlord is holding a last month's rent deposit, I find in these circumstances that it would not be unfair to delay the eviction until September 30, 2023.

**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 30, 2023.
2. The Tenant's last month's rent deposit is applied to September 2023.
3. The Tenant shall pay the Landlord compensation of \$40.68 per day for the use of the unit starting October 1, 2023 until the date the Tenant moves out of the unit.
4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before September 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 1, 2023 at 6.00% annually on the balance outstanding.
6. If the unit is not vacated on or before September 30, 2023, then starting October 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 October 1, 2023.

**August 21, 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on April 1, 2024 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.