



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

**Citation:** 2580218 Ontario Ltd v Bungay, 2023 ONLTB 35975

**Date:** 2023-08-18

**File Number:** LTB-L-020580-22

**In the matter of:** Apt 3, 41 SPRUCE ST  
AURORA ON L4G1R9

**Between:** 2580218 Ontario Ltd

Landlord

**And**

Ronald Bungay

Tenant

2580218 Ontario Ltd (the 'Landlord') applied for an order to terminate the tenancy and evict Ronald Bungay (the 'Tenant') because:

- because the Tenant(s), another occupant of the rental unit or a person the Tenant(s) permitted in the residential complex substantially interfered with the reasonable enjoyment of the residential complex or another lawful right, privilege or interest of the Landlord(s) or another tenant.

This application was heard by videoconference on February 22, 2023.

The Landlord Vadim Fadeev, the Landlord's wife Marina, the Landlord's witness Hanna Morgan, Robert Eastman, Roy Zinn the Tenant's legal representative Benjamin Hognestad, the Tenant and the Tenant's witnesses Kelly Smith and Lori Schachter attended the hearing.

Preliminary Issues:

1. The Tenant's representative raised an issue in respect of the 2<sup>nd</sup> N5, specifically that the information as contained therein is lacking particulars as pertaining to events that occurred that they are vague, unclear and are speculative. The Tenant's legal representative submitted that the notice was defective because it lacked sufficient detail, citing Ball vs Metro Capital.
2. On review of the 2<sup>nd</sup> N5 Notice, while some of the allegations were broad in nature, times and dates were clearly identified.

3. The second issue raised was that the Landlord while serving the 1<sup>st</sup> N5 notice with a termination date of April 6, 2022, only uploaded the certificate of service (COS) one day before the hearing and dated it accordingly as February 21, 2023. While there is no dispute that the Tenant was served with the 1<sup>st</sup> N5 notice, the Tenant does not recollect when it was served.
4. The Landlord's wife Marina testified that she served the N5 Notice as indicated on the certificate of service (COS), that being on March 16, 2022. While the Tenant could not remember the exact date, he concurred that he was served with the notice sometime around March 16, 2022 as indicated by the Landlord.
5. The third issue raised was described as substantive and procedural in nature, in that it was in relation to the allegations in the 1<sup>st</sup> and 2<sup>nd</sup> N5 notices. It was submitted that the Landlord attempted to broaden the scope of the second N5 based on the grounds of termination. The first N5 notice in this case was for overcrowding, the second N5 notice is in respect of events of March 28, 20, 31, 2022 alleging smoking in the rental complex and noise, characterized as substantial interference with reasonable enjoyment as a ground for termination.
6. Subsection 68(1)(b) of the *Residential Tenancies Act, 2006* (the 'Act'), states that a Landlord can give a further notice of termination to a tenant if within six months after a notice is given under section 62,64, or 67 has become void an activity take 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 situation that is described in subsection 61(1) and that involves an illegal act, trade, business, or occupation described in clause 61(2)(a).
7. What this means is that the Landlord is entitled to bring a 2<sup>nd</sup> N5 and it is not relevant whether the issues raised in the 2<sup>nd</sup> N5 were the same or similar to the issues in the 1<sup>st</sup> N5.
8. Based on the outlined reasons above, the matter proceeded to hearing.

**Determinations:**

9. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the application is dismissed.
10. The Tenant was in possession of the rental unit on the date the application was filed.
11. The Landlord's L2 application is based on two N5 notices.
12. The first N5 was served on the Tenant on March

16, 2022 with a termination date of April 6, 2022, alleging that the Tenant has more people residing in the rental unit than permitted by health, safety or housing standards, and indicates that the Tenant is to reduce the number of occupants to 2.

13. The second N5, served on April 3, 2022 with a termination date of April 30, 2022 alleges substantial interference with the Landlord's or another tenants reasonable enjoyment of the residential complex, and/or lawful rights privilege or interests. It outlines events of March 28, 30, 31 2022 as pertaining to noise and smoking in the rental unit and residential complex.

#### First N5

14. The first N5 was given under section 67 of the Residential Tenancies Act, 2006 (the "Act"). An initial N5 is a "voidable" notice, as subsection 67(3) of the Act permits the Tenant seven days after receipt of the notice to remedy the behaviour and void the Landlord's right to terminate the tenancy. The sole ground for termination selected by the Landlord in the first N5 was overcrowding.
15. Therefore, in order for this first N5 to be valid, the Landlord bears the burden of proving, on balance of probabilities, that there are more people living in your rental unit than is permitted by health, safety or housing standards.
16. The Instructions on how to complete the N5 notice in respect of allegations of overcrowding as posted on the Board's site indicate that:

*"if you are giving this notice because the number of people living in the rental unit is more than permitted by health, safety or property standards, include the name of the law or by-law that sets out the maximum number. Also include the maximum number allowed by this law. You can contact the municipality to find out if there is a by-law, and if there is, to find out how many people are allowed to live in the rental unit. If this is the first form N5 Notice to End Your Tenancy you are giving your tenant you must also clearly provide what the tenant must do to void the notice."*

17. Regarding having more than the permitted number of people living in the unit, the evidence is that the Tenant's niece and her family were staying with the Tenant and his partner. It was undisputed that Kelly Smith stayed in the unit with the Tenant arriving some time in the middle of February and departing on or about March 23, 2023. The Landlord did not dispute this, submitting that by doing so the Tenant was not complying with the rental agreement.
18. Section 67 of the Residential Tenancies Act, 2006 (the 'Act'), provides that the landlord may give a tenant notice of termination if the number of persons occupying the unit on a continuing basis results in a contravention of health, safety or housing standards required by law.

19. The overcrowding must be continuous and must be contrary to health, safety or housing standards required by law. A Landlord must put into evidence the law they feel the Tenant has contravened (for example a municipal property standards bylaw) and show that its terms have been breached. The Landlord has done neither here.
20. While, not advancing any such bylaw, the Landlord made reference to the sheer size of the unit, that being a one bedroom apartment and being insufficient in size to accommodate any more than the 2 persons as identified in N5 notice.
21. Kelly Smith testified that she and her family were staying with the Tenant on a guest basis while awaiting completion of renovations on her rental unit. This is further confirmed in a text exchange between the Landlord and the Tenant on March 23, 2023, where the Landlord asks “have your guests left yet.?” To which the Tenant replies that they have departed.
22. I therefore find that the Landlord has not proven on balance of probabilities proven that there are more people living in the rental unit than permitted by health, safety or housing standards. The Tenant is permitted to have guests, that includes over night guests.

Second N5

23. The second N5 is immaterial, if the first N5 fails to meet the test for termination of the tenancy on the grounds alleged in it, the second N5 also fails.
24. Without a valid notice that substantiates the L2 Application, the application cannot proceed.

**It is ordered that:**

1. The Landlord’s application is dismissed.

**August 18, 2023**

**Date Issued**

\_\_\_\_\_  
Alicia Johnson

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.