



**Order under Section 69 / 89
Residential Tenancies Act, 2006**

Citation: J. Fern Incorporated v Tokonitz, 2023 ONLTB 53905

Date: 2023-08-03

File Number: LTB-L-076107-22

In the matter of: 304, 500 Canatara Court Kingston
ON K7M0E4

Between:	J. Fern Incorporated	Landlord
	And	
	Sharon Tokonitz	Tenant

J. Fern Incorporated (the 'Landlord') applied for an order to terminate the tenancy and evict Sharon Tokonitz (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.

J. Fern Incorporated (the 'Landlord') also applied for an order requiring Sharon Tokonitz (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on July 24, 2023.

The Landlord's Agent Jeffrey Fern and the Tenant's Legal Representative John Done attended the hearing.

Determinations:

Preliminary Issue

1. At the hearing, the Tenant's Legal Representative objected to the content of the N5 notices served on the Tenant. In particular, Mr. Done submitted they did not set out sufficient reasons and details as required by section 43(2) of the *Residential Tenancies Act, 2006* (the Act). I too had concerns with the contents of the N5 notices when I reviewed the file.
2. In *Ball v Metro Capital Management Inc.* [2002] OJ No 5931 (Div Crt)] the Divisional Court considered subsection 43(2) of the Act and found that the purposes of requiring that a

landlord provide reasons and details on a notice given pursuant to the Act was to: (a) allow the tenant to be in a position to know the case to be met before the Board; (b) allow the

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tenant to decide whether or not to dispute the allegations made by the landlord; and, in the case of a voidable notice, (c) allow the tenant to stop the conduct or activity or correct the omission. The Divisional Court found that, to be in compliance with subsection 43(2), a notice should include dates and times of the alleged conduct, together with a detailed description of the alleged conduct. [Ball v Metro Capital Management Inc. [2002] OJ No 5931 (Div Crt), paras 10 and 12.]

3. The second N5 notice served on the Tenant by the Landlord contains the following allegations:
 - a) On October 12, 2022, the Tenant has not corrected the problem to the satisfaction of the Landlord. No retribution for damages caused by neglect of the apartment as stated in the first N5 form with more than 7 days to comply.
 - b) From July 2015 to September 2022 there were constant complaints of smell and flies. Found the apartment full of garbage on more than on occasion. Bathroom toilet unusable even after fixing it at least three times and replacing to a flush toilet. Feces all over toilet and floor upon each inspection.
 - c) From April 2021 to September 2022 many inspections to help with tenant staying on top of having her apartment clean to no avail. Many opportunities to adjust behaviour and to get regular assistance from VON and family, no consistent cleanliness. Smell and flies still happening.
4. I agree with Mr. Done that this N5 notice does not set out the dates and times of the alleged conduct, nor does it provide the Tenant a detailed description of them. I do not find the Tenant could have known the case to be met or had enough information to decide whether or not to dispute the allegations. I did not find the second N5 notice complied with the requirements of section 43(2)
5. My review of the second N5 notice submitted along with the Landlord's applications also shows the notice is not signed. Section 43(1)(c) of the Act requires a notice of termination be signed by the person giving the notice or their agent. The Landlord stated their copy of the notice was signed but provided no explanation as to how an unsigned copy of the notice accompanied the application.
6. For both of the above reasons, I found the second N5 notice that was served on the Tenant to be invalid.
7. While the application was filed within 30 days of the termination date contained on the first N5 notice, I found this notice also failed to meet the requirements of section 43(2) of the Act as stated in Ball v Metro Capital Management Inc. [2002] OJ No 5931 (Div Crt)].

8. The allegations on the first N5 notice of termination read as the Landlord's journal of the tenancy. There are 14 entries on the notice starting on July 16, 2015 and concluding on September 28, 2022. While each entry contains a date, none of them include a time when the alleged conduct occurred or was discovered. I did not find it was clear what the allegations were or where many of them occurred. The allegations mention flies, smells, an useable kitchen and a toilet. They mention complaints from other tenants. The only time the word "tenant" is used is in relation to other tenants in the residential complex.

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9. I found the first N5 notice deficient as it did not clearly set out reasons someone could reasonably be expected to understand and respond to. Further, the notice does not provide the Tenant with a clear path to void the notice.
10. The Landlord argued that issues being taken with the notices of termination missed the larger point of the application, citing the existence of serious health concerns. While I can appreciate the Landlord's disappointment, the requirements for a valid notice of termination are firm and cannot be altered.
11. Since I found both the first and second N5 notices of termination to be invalid, the Landlord's application is dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

August 3, 2023

Date Issued

John Cashmore

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.