



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

Citation: Brudny v Moon, 2023 ONLTB 46842

Date: 2023-07-25

File Number: LTB-L-026773-22

In the matter of: basement apartment, 16 Jones Court
Aurora ON L4G2B8

Between: Tatiana Brudny Landlord

And

Melanie Amber Moon Tenants
Robert Lamontagne

Tatiana Brudny (the 'Landlord') applied for an order to terminate the tenancy and evict Melanie Amber Moon and Robert Lamontagne (the 'Tenants') because the Tenants, another occupant of the rental unit or someone the Tenants 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 Tenants remained in the unit after the termination date.

This application was heard by videoconference on March 29, 2023.

The Landlord, the Tenants, the Tenants' legal representative, Sharon Crowe, and the Landlord's witnesses, Richard Duquette, attended the hearing.

Determinations:

1. The Landlord's application is dismissed for the reasons that follow.
2. The Landlord's application is based on a Second N5 Notice of Termination. The Termination date in the notice is May 24, 2022 and the notice was served personally to Melanie Amber Moon on May 10, 2022.
3. In order for the Landlord to have served a second N5 notice, the Landlord had to first serve a valid first N5 Notice within 6 months prior to the Second N5 Notice.
4. The Tenants raised a preliminary issue at the onset of the hearing that the first N5 Notice is confusing and too onerous for the Tenants to understand what is necessary in order to void the notice and therefore the notice should be considered defective.
5. The Tenants rely on the Divisional Court case of *Ball v. Metro Capital Property*, [2002] O.J. No. 5931 ('*Ball*') and couple of LTB decisions under CEL-02623-21 and SWL-56925-21

with similar findings as they relate to the validity of notice and confusion with particulars and the case to be met.

6. In *Ball*, the Divisional Court pronounced that notices of termination must provide sufficient detail to allow the opposing party to know the specific allegations being made so that the opposing party can be in a position to know the case that must be met.
7. MacDougall J. wrote in *Ball* that, “Particulars should include, dates and times of the alleged offensive conduct together with a detailed description of the alleged conduct...” The Court went on to state that the various purposes for requiring a party to provide reasons and details include the responding party’s need “to know the specific allegations made so that she/he can be in a position to know the case that must be met; to decide whether to dispute the allegations made before the Tribunal; and to consider whether to stop the conduct or activity or correct the omission...”
8. At the hearing, I expressed my concerns with the N5 Notice, specifically whether it was clear enough to allow the Tenants to know the specific allegations being made. The Landlord submitted that the notice is clear and that at least one of the dates on the notice can be justified and therefore the application should proceed. The Landlord also asserts that they have the evidence to support their allegations.
9. I do note on file that the Landlord has filed substantial evidence including approximately 213 pages of documents and at least 8 MOV files.
10. Although the notice of termination alleges that the Tenants breached the act repeatedly by acting in such a way as to disturb the other Tenants in the residential complex, the notice only contains three dates and no other specific times or any further specifics regarding exactly when these allegations occurred. It appears they happened over several years and on an “ongoing” basis as the Landlord suggests.
11. Additionally, the notice is confusing in that it outlines a date of April 29, 2022 for instance, but the details provide a date of April 28, 2022. The March 19, 2022 incident does not describe the time the alleged conduct occurred and appears that there was loud music for 10 minutes and the Tenant corrected the issue when asked to. Additionally, the alleged conduct over two nights straight on April 6 and 7 2022 do not describe for how long the issue persisted and adds a confusing date of 8 of April to the details.
12. In my view, the notice of termination provided to the Tenants is convoluted and confusing as it includes a historical outline of the tenancy to date. Essentially, the N5 Notice requires the Tenants to comb through the notice, figure out what the term “antisocial behavior” means in terms of how they may have interfered and then figure out exactly what is required to void the notice.
13. In my view, the notice fails to provide the Tenants sufficient details in order to decide whether or not to dispute the Landlords application and it therefore does not satisfy the test in *Ball*. Accordingly, I find the first N5 Notice to be invalid.
14. Having found that the first N5 Notice is defective, the Landlord cannot rely on a second N5 notice to correct the shortfall in the first notice.

15. A Landlord cannot submit substantial evidence in order to correct a deficient notice of termination and the Landlord cannot pick and chose which dates in a notice of termination that they want to proceed on in order to correct a shortfall in the notices. For these reasons the application must be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

July 25, 2023
Date Issued

Terri van Huisstede
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.