



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

**Citation:** Niagara Regional Housing v Gauley, 2023 ONLTB 51671

**Date:** 2023-07-24

**File Number:** LTB-L-040120-22

**In the matter of:** 8 BOWDEN ST  
FORT ERIE ON L2A2P2

**Between:** Niagara Regional Housing Landlord

**And**

Erin Gauley Tenant

Niagara Regional Housing (the 'Landlord') applied for an order to terminate the tenancy and evict Erin Gauley (the 'Tenant') because the Tenant or another occupant of the rental unit or someone they permitted in the residential complex have substantially interfered with the Landlord or another tenant's reasonable enjoyment. 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 July 13, 2023.

Only the Landlord and Landlord's representative Judith Callender the Tenant attended the hearing.

As of 10:35am, 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. The Landlord served two N5 Notices of Termination on the Tenants. The first N5 Notice was served on April 25, 2022 and had a termination date of May 16, 2022. The second N5 Notice was served on July 13, 2022 and had a termination date of August 08, 2022.
2. The first N5 alleged that on March 7, 2022 at 10:42am, the Landlord inspector the exterior property and found excessive amounts of bags of garbage as well as loose garbage stream across the patio. The N5 also alleged that on April 29, 2022 at 12:00pm, the

Landlord inspected the Tenant's patio, after receiving several complaints from the other tenants, and found excessive bags of garbage and dog feces.

3. Section 64(3) of the Act provides that the first N5 is voided if the Tenant stops the conduct or activity within seven days of receiving the notice or corrects the omission complained about. In this case, the first voidable N5 notice was served on April 25, 2022, meaning the seven-day voiding period ran from April 26, 2022, to May 03, 2022. The Tenant voided the first N5 when he removed some garbage bags. Therefore, the Landlord was allowed to

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give the Tenant a second, non-voidable N5 notice of termination under section 68 of the Residential Tenancies Act, 2006 (Act).

4. The Landlord served the Tenant with a second, non-voidable N5 on July 13, 2022, with a termination date of August 08, 2022, pursuant to section 68 of the Act. This second N5 contained the same allegations as the first. As a result, only the first N5 will be considered in this order.
5. The Landlord testified that the Tenant tried to clean the patio by removing some garbage bags. The Landlord testified that she received many complaints from the residents and inspected the patio again on April 29, 2022, and found garbage bags, debris and feces in the patio area.
6. The Landlord provided inspection reports and photographs dated March 7, 2022, April 24, 2022, May 09, 2022, June 29, 2022, and July 06, 2022, as evidence. These documents clearly show that the patio is unclean, with garbage bags, debris, and feces present.
7. The Landlord also submitted evidence of complaint emails from the Municipal Law Enforcement unit of Fort Erie between April 28 and May 10, 2022, as well as an order dated July 06, 2022. The order instructed both the Landlord and the Tenant to clean the patio of the rental unit.
8. The Landlord testified that she hired a cleaning service contractor named Aces Contracting Inc. to clean the rental unit's patio on six different occasions: September 01, 2022, October 26, 2022, November 08, 2022, November 30, 2022, February 22, 2023, and April 18, 2023. As evidence, the Landlord submitted invoices from the cleaning service that indicated the contractor had removed garbage, dog feces, debris, and other items from the patio, resulting in an expense of \$1,255.59 paid by the Landlord accordingly.
9. Subsection 64 (1) of the Act states:

A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the

landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

10. After reviewing the evidence presented by the Landlord, it is clear that the Tenants have substantially interfered with another tenant's reasonable enjoyment by leaving debris, garbage, and dog feces in and around the patio. The evidence also indicates that the Tenant continues to leave the debris, garbage, dog feces in the patio. This is evident from the fact that the Landlord's contractor had to clean it up again on April 18, 2023.
11. Based on the uncontested evidence of the Landlord, I conclude that the Landlord has successfully demonstrated, with a balance of probabilities, that the Tenant has substantially interfered with the Landlord's and the other tenants' reasonable enjoyment of the residential complex by failing to keep the patio in a state of ordinary cleanliness.

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#### Relief from eviction

12. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

#### **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 August 4, 2023.
2. The Tenant shall pay to the Landlord \$2,474.24, which represents compensation for the use of the unit from August 9, 2022 to July 13, 2023.
3. The Tenant shall also pay the Landlord compensation of \$7.30 per day for the use of the unit starting July 14, 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. The total amount the Tenant owes the Landlord is \$2,660.24.
6. If the Tenant does not pay the Landlord the full amount owing on or before August 4, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 5, 2023 at 6.00% annually on the balance outstanding.
7. If the unit is not vacated on or before August 4, 2023, then starting August 5, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

8. 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 August 5, 2023.

**July 24, 2023**

**Date Issued**

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Percy Laryea

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 February 5, 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.