



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

**Citation:** First Elnor Holding Limited v Gilmore, 2023 ONLTB 20873

**Date:** 2023-06-12

**File Number:** LTB-L-014912-22

**In the matter of:** 1607, 33 WOOD ST  
TORONTO ON M4Y2P8

**Between:** First Elnor Holding Limited Landlord

**And**

Julia Gilmore Tenant

First Elnor Holding Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Julia Gilmore (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 January 24, 2023.

Only the Landlord's legal representative, S. Sciulli, and the Landlord's witness, S. Zeeshan, attended the hearing.

As of 12:00 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:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. **N5 Notice of Termination**

On March 3, 2022, the Landlord gave the Tenant an N5 notice of termination. The notice of termination alleged that after a unit inspection carried out on February 11, 2022, the unit

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was found to be cluttered and dirty, and not in an ordinary state of cleanliness. The Tenant was ordered to bring it into an ordinary state of cleanliness within 7 days after service of the N5 notice of termination.

4. The Landlord alleges that the Tenant did not stop the conduct, nor did she bring it into an ordinary state of cleanliness within seven days after receiving the N5 notice of termination, therefore, the Landlord alleges, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
5. The Landlord's witness, S. Zeeshan (SZ), said that after the inspection on February 11, 2022, the Landlord's employees found the rental unit in a dirty, cluttered state, and it presented a fire hazard. She said that the Tenant was informed of the findings, and she was aware of the N5 notice of termination.
6. SZ said that the Tenant did not fix the problem, but she expressed concern about eviction. There were photos of a further inspection, carried on March 11 2022, in which the rental unit was found unchanged.
7. Finally, SZ said that the Landlord carried out the latest inspection on January 9, 2023, a couple of weeks before the hearing. She submitted into evidence photos of the various inspections. She said that she found the rental unit was still a fire hazard, cluttered and dirty.
8. SZ said that the rental unit has changed little from the first inspection in February 2022, and the Landlord is concerned for the safety of the building as a result of the fire hazard presented by the Tenant's rental unit. She said that the Landlord's employees have discussed the issue with the Tenant for years, as this has been an ongoing problem. SZ also said that the Tenant has refused pest control treatment, although the Landlord has not received any complaints about infestation, nor was infestation observed at the last inspection in January 2023.
9. The Landlord requests eviction because the Tenant has a hoarding issue, and the Landlord does not know whether there are pests in the rental unit because it is not in a state to be treated. The Landlord submits that the Tenant has not addressed the cleanliness, hoarding and clutter problem in almost a year, and she has failed to take the problem seriously.

### **Reasons and Analysis:**

10. Based on the Landlord's uncontested evidence, including photos from inspections in February and March 2022, as well as SZ's testimony, I find that the Tenant did not repair or address the problem sufficiently after March 3, 2022, in order to void the N5 notice of termination. The notice of termination was not voided.
11. Based on the Landlord's uncontested evidence, the rental unit is in a cluttered and dirty state, there are personal items and debris all over the floors and counters of the unit, and there is an access issue. There is no evidence that the state of the unit changed between February and March 2022. Consequently, I find that 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. Therefore, the Landlord has proved, on a balance of

probabilities, the grounds for termination of the tenancy.

12. The Landlord incurred costs of \$186.00 for filing the application and is therefore entitled to reimbursement of those costs.
13. The Landlord collected a rent deposit of \$1,161.86 from the Tenant and this deposit is still being held by the Landlord.

### **Relief from eviction**

14. Although I have found that the condition of the Tenant's rental unit proves, on a balance of probabilities, that the Tenant has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant, the photos showed that the Tenant had attempted to organize her belongings, and she had taken some steps to tidy the unit a bit between the inspection in March 2022 and the one carried out on January 9, 2023.
15. The unit remained cluttered, and there was evidence of hoarding still in January 2023. However, there were signs that small attempts had been made by the Tenant to improve things.
16. In addition, I consider that this has been a very long tenancy. The Tenant has lived in her rental unit for over 30 years.
17. Consequently, I have considered all of the disclosed circumstances above in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and I find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. In particular, the Tenant seems to recognize the importance of taking steps to address the situation. She should be given a bit more time to ensure that her unit is put into a state of ordinary cleanliness.
18. This order was originally issued in February 2023, but it was inadvertently not sent to the parties at that time. Therefore, the order has been re-issued with new dates for compliance.

### **It is ordered that:**

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant shall clean and declutter her rental unit so that it is in an ordinary state of cleanliness on or before July 15, 2023.
3. The Tenant shall permit the Landlord entry for inspection, in order for the Landlord to determine whether the Tenant's rental unit is in an ordinary state of cleanliness, on or after July 15, 2023, and upon lawful 24 hours' notice of entry by the Landlord.

4. If the Tenant fails to comply with the conditions set out in paragraphs 2 and 3 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
5. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing on or before June 13, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 14, 2023 at 6.00% annually on the balance outstanding.

**June 12, 2023**  
**Date Issued**

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Nancy Morris  
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.