



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

**Citation:** Syed Natiq mehdi Zaidi v Tuhin Mathur, 2023 ONLTB 39948

**Date:** 2023-05-25

**File Number:** LTB-L-030107-22

**In the matter of:** 907, 5025 FOUR SPRINGS AVE MISSISSAUGA  
ON L5R0G5

**Between:** Syed Natiq mehdi Zaidi Landlord

**And**

Dipanwita Das Tenant  
Tuhin Mathur

Syed Natiq mehdi Zaidi (the 'Landlord') applied for an order to terminate the tenancy and evict Dipanwita Das and Tuhin Mathur (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 May 17, 2023.

Only the Landlord attended the hearing. The Landlord was represented by Leonard Howell.

As of 9:40am, 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:**

**PRELIMINARY ISSUES**

**A. Tenant's Ex Parte Submissions**

1. While the Tenant did not attend the hearing, I note that on May 16, 2023 at 3:55pm, the Tenant uploaded a letter with some exhibits to the Tribunals Ontario Portal. In the letter, the Tenant states that she is unable to attend the hearing as she does not have a legal representative. The Tenant seeks that the Board consider her written submissions as her response to the Landlord's application.
2. The problem with the Tenant's request is that the hearing format for this application was through a video conference and not written submissions. The notice of hearing clearly states that if a party fails to attend the hearing, the hearing may proceed in their absence.
3. The Tenant could have attended the hearing or sent someone on her behalf to seek an adjournment or submitted a request to change the hearing format in advance of the hearing. However, the Tenant did neither and only at the 11<sup>th</sup> hour, made submissions to the Board.
4. I note that application LTB-L-037501-22 concerns the same parties for a rent arrears application; at that hearing, the Tenant was in attendance, sought an adjournment, which was denied, and is now appealing the order at Divisional Court. I take this to mean the Tenant is aware of the Board processes and the fact that she can request an adjournment.
5. Thus, I find the Tenant was aware of the hearing date, did not seek an adjournment or alternative hearing format, and chose not to attend – perhaps to avoid another adjournment request being denied. Further I have reviewed the submissions uploaded to the Tribunals Ontario Portal and do not find they materially change the findings of fact before me. Thus, the Tenant's request for written submissions is denied. I proceeded to hear the matter on an uncontested basis.

#### B. Second N5 Notice of Termination

6. At the hearing, I raised a preliminary issue with respect to the second N5 which forms the basis of the Landlord's L2 application. Specifically, that it fails to comply with subsections 68 and 69(2) of the *Residential Tenancies Act, 2006* which state:

68 (1) A landlord may give a tenant notice of termination of the tenancy if,

(a) a notice of termination was given to the tenant under section 62, 64 or 67; and

(b) **more than seven days but less than six months** after the notice mentioned in clause (a) was given to the tenant, an activity takes 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 a situation that is described in subsection 61 (1) and that involves an illegal act, trade, business or occupation described in clause 61 (2) (a).

69 (1) A landlord may apply to the Board for an order terminating a tenancy and evicting the tenant if the landlord has given notice to terminate the tenancy under this Act or the Tenant Protection Act, 1997.

[Emphasis added.]

7. By way of background, the first N5 notice of termination was served to the Tenant on May 20, 2022 with a termination date of June 9, 2022. The remedy period for this notice ran between May 20-27, 2022.
8. The Landlord's L2 application was filed on May 30, 2022.
9. The second N5 notice of termination was served to the Tenant on May 31, 2022 with a termination date of June 15, 2022 alleging incidents that took place on May 21 and 28, 2022.
10. So the issue with the second N5 notice of termination was that it was served after the L2 application was filed, which contravenes subsection 69(1) of the Act and that it consists of an incident that occurred during the remedy period (May 21, 2022) which contravenes subsection 68(1) of the Act.
11. At this point, the Landlord sought to amend the application to be based on the first N5 notice of termination.
12. Given that the application was filed within 30 days of the termination date on the first N5, the fact that the Landlord's representative only discovered the need to amend at the hearing, and the fact that both notices of termination was served to the Tenant, I found it appropriate to grant this request to amend.

### C. Request to Amend

13. Towards the end of the hearing, the Landlord sought to amend their L2 application to include a section 89(1) damage claim for the damages that were discovered at the rental unit.
14. Rule 15 of the Board's Rules of Procedure outline the requirements for amending applications and the considerations that are to be made.
15. The problem with the Landlord's request is that the Tenant is unaware of the Landlord's request before the Board to add additional damages that were not part of the L2 application. It is unclear why the application was not amended prior to the hearing when the damages were discovered.
16. Under the circumstances, I did not find it appropriate to grant the Landlord's request. As such, the request to amend the application to include a damage claim was denied.

### L2 APPLICATION

17. By way of background, this is a month-to-month tenancy in which rent is due on the first of the month in the amount of \$2,351.00. The rental unit is a condominium unit that the Tenant occupies.
18. As of the hearing date, the Tenant remains in possession of the rental unit.
19. The Landlord's uncontested evidence was the Tenant did not void the first N5 notice of termination as another incident took place on May 21, 2022 whereby the Tenant repeated the same behaviour.
20. At the hearing, the Landlord's evidence was the Landlord had listed the property for sale and scheduled showings to prospective buyers. On May 5, 2022 and May 19, 2022, showings from the Landlord's realtor were scheduled for the rental unit and confirmed.

Notice of these showings were provided to the Tenant was well and submitted into evidence.

21. However, on the date and time of the showings, the Tenant refused entry to the rental unit, denying the realtor and prospective buyers, access to the property.
22. After the N5 was served to the Tenant, further showings were scheduled – on May 21, 2022 during the remedy period for which notice was served. Once again, access was denied by the Tenant.
23. On May 28, 2022, another set of showings were scheduled for the rental unit and yet again, the Tenant refused entry and denied access.
24. A complete log of the showing dates was submitted into evidence. The Landlord's uncontested evidence was, the Tenant denied every showing. Due to the Tenant's refusal of access to the property, the Landlord was not able to sell the rental unit.
25. The Landlord seeks a termination of the tenancy.

#### ANALYSIS

26. Subsections 64(1) and 27(2) of the Act state the following:

64 (1) 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.**

27(2) A landlord or, with the written authorization of a landlord, a broker or salesperson registered under the Real Estate and Business Brokers Act, 2002, may enter a rental unit in accordance with written notice given to the tenant at least 24 hours before the time of entry to allow a potential purchaser to view the rental unit

[Emphasis added.]

27. Based on the uncontested evidence before the Board, I find that the Tenant's consistent denial of entry to the rental unit substantially interferes with the Landlord's lawful rights under the Act to have potential purchasers view the rental unit.
28. I do not find a conditional order to be appropriate under the circumstances. The evidence before me was that the Tenant was unwilling to change their behaviour even after the notice of termination was served upon them.
29. Thus, I find it appropriate to grant the Landlord's request to terminate the tenancy.
30. Since the Tenant did not appear at the hearing to provide submissions regarding any circumstances the Board should consider as to whether I should delay or deny terminating the tenancy, I will grant the order as requested by the Landlord.
31. 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.

#### REQUEST FOR COSTS

32. At the hearing, the Landlord sought \$300.00 in costs against the Tenant. The Landlord submits the Tenant's behaviour has escalated since the notices were served. The Landlord submits the Landlord is living with his sister and borrowing money to make ends meet.
33. Pursuant to s. 204(2) of the Residential Tenancies Act, 2006 (the 'Act') the Board may order a party to an application to pay the costs of another party.
34. The Board's Rules of Practice state:

23.2 A member may exercise discretion to order a party to pay another party's:

representation/preparation fees; and other

out-of-pocket expenses.

...

23.3 A party who engages in unreasonable conduct which causes undue delay or expense may be ordered to pay costs to another party.

35. Based on the submissions before the Board I do not find the evidence is sufficient to establish the Tenant's behaviour has been unreasonable throughout the proceedings and has caused delay in the proceedings. This is the first appearance on the Landlord's application where the matter proceeded on an uncontested basis. It is unclear what delay

or unreasonable conduct was exhibited by the Tenant to warrant costs on top of a finding of substantial interference.

36. Therefore the Landlord's request for costs is denied.
37. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

**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 June 5, 2023.
2. If the unit is not vacated on or before June 5, 2023, then starting June 6, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 June 6, 2023.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenants do not pay the Landlord the full amount owing on or before June 5, 2023, the Tenants will start to owe interest. This will be simple interest calculated from June 6, 2023 at 6.00% annually on the balance outstanding.

**May 25, 2023**

**Date Issued**

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Sonia Anwar-Ali

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 December 6, 2023 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.