



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

**Citation:** Marczenko v Cordeiro, 2023 ONLTB 35612

**Date:** 2023-05-05

**File Number:** LTB-L-002650-23

**In the matter of:** Unit #2, 669 Victoria Street London  
ON N5Y4C2

**Between:** Andrew Marczenko Landlord

**And**

Ligia Cordeiro Tenant

Andrew Marczenko (the 'Landlord') applied for an order to terminate the tenancy and evict Ligia Cordeiro (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.

This application was heard by videoconference on March 22, 2023. The Landlord and the Tenant attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the application is granted.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On December 10, 2022, the Landlord gave the Tenant a first, voidable N5 notice of termination with a termination date of January 31, 2023. The notice contained the following allegations:

- On November 30, 2022, at 20:18, the Tenant sent the Landlord a picture of a very threatening letter that was taped to the door of another rental unit. The letter was written by the Tenant's boyfriend and contained hateful and disrespectful messages. The recipient of the letter moved out of the complex as a result of this document.
  - On December 4, 2022, at 11:27am, the Tenant's boyfriend sent a text message to the Landlord celebrating the Tenant moving out, using vulgar language.
4. The 7 day voiding period was from December 11, 2022 to December 17, 2022.
  5. Pursuant to section 64 (3) of the *Residential Tenancies Act, 2006* (the 'Act'), The notice of termination under subsection (1) is void if the tenant, within seven days after receiving the notice, stops the conduct or activity or corrects the omission
  6. On December 21, 2022, the Landlord gave the Tenant a second N5 notice of termination also with a termination date of January 31, 2022. The notice of termination contains, in part- the following allegations:
    - On December 17, 2022, the Landlord and their work crew attended the property to complete repairs in the backyard shed and an occupant of the Tenant began yelling and videotaping the Landlord and his crew which provided a distraction and caused the Landlord to have to stop the work and come back on another day.
    - On December 20, 2022, at 14:58, the Landlord was notified by London Hydro Water Department that the water consumption for the unit had increased, and the Tenant was not paying their utilities in accordance with the lease agreement.
  7. The Landlord gave the Tenant a second, non-voidable N5 notice of termination under section 68 of the *Residential Tenancies Act, 2006* (Act).
  8. The Tenant did not dispute the allegations with respect to the first N5. But essentially stated that those instances were both done by her common-law partner, who is an occupant of the rental unit and were not done at the Tenant's instruction.
  9. The Tenant did not dispute the incident on December 17, 2022, however stated that she was not provided any notice of the work being done and confirmed that they did film the Landlord's work crew, however denied being a distraction and stated that they did not yell, threaten, or swear at the Landlord and/or their crew.
  10. The Tenant did not dispute that she has been delinquent with paying the utility bills in accordance with the lease agreement. But submitted that she has not been negligently wasting water in her rental unit, causing the Landlord' bill to increase. That there are other tenants in the residential complex and that there is a possibility that the consumption could have been caused by a leak somewhere within the residential complex.
  11. The Landlord testified that due to an unprecedented spike in the water consumption at the residential complex, the utility provider notified him. He stated that the timing of the events was suspicious as it was around the timing of the service of the first N5. He also testified

that he had completed two inspections throughout the complex (unit 1 and unit 3) and did not find a source of any leaks. The Landlord did not conduct an inspection of this tenant's unit. The Landlord also testified that they did not witness the tenant negligently wasting or consuming water. Therefore, I find that at best- this is a speculation.

12. On any application before the Board, the applicant bears the burden to establish that it is more likely than not, their version of events is true. In this case that burden lies with the Landlord. I find that the Landlord has led insufficient evidence to establish that it is more likely than not, that the Tenant negligently consumed or wasted water causing an increase in their utility cost.
13. As the Tenant does not dispute some of the allegations contained in the notices and based on the evidence and submissions adduced at the hearing, I find that the Tenant or an occupant of the Tenant's rental unit has substantially interfered with the Landlord's reasonable enjoyment of the residential complex. However, I do not find that the Landlord is entitled to an eviction order. I find that the Landlord's concerns can appropriately be addressed and remedied by a conditional order. Those reasons are set out below.

## RELIEF FROM EVICTION

14. 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 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.

### First N5 Incidents

15. The November 30<sup>th</sup>, 2022, letter was an isolated incident. The Tenant submitted that there was a disagreement with the other tenant and her common law partner wrote a letter that he should not have. A point of contention surrounding this letter was an acronym that was used in the letter. I spent time in the hearing room trying to canvas the meaning of this acronym and the way it was to be interpreted in the context of the letter- apparently the meaning that the parties believed was attributed to this acronym was "play the fuc\*ing objective", which is commonly used in the gaming community when playing shooting video games.
16. I read the full contents of the letter- there were some comments that were rude, and one could assume that receiving the letter would be unwelcomed. However, aside from the acronym there were no harsh threats, profanities, etc.
17. The Landlord testified as a result of this letter that Tenant moved out. The Tenant testified that it was her knowledge that the Tenant moved out on her own volition and not due to this letter.
18. During the hearing the Tenant was quite co-operative. She understood that the actions of her common-law partner (occupant) could be considered problematic. A Tenant is

responsible for the act(s) of their guests or occupants. The Tenant submitted that this letter was not written by her, was not done with her instruction and understood that the letter was not the best way to handle a conflict with another Tenant. She stated that it would not happen again.

19. The Landlord did not call the former Tenant as a witness to testify at the hearing and give submissions regarding the letter, so I could not truly consider the impact on them.
20. Regarding the text message sent on December 4, 2022 by the Tenant's partner- I also find that this is an isolated incident. The message was sent to the Landlord which contained some profanities. However, these two instances can be remedied by a conditional order.

#### Filming the Landlord and their Agents

21. The remaining issues to be considered are ones that involve the Tenant and/or their occupant filming the Landlord and their agents while on the property of the residential complex or when in the Tenant's rental unit.
22. The Landlord raised one additional incident that happened after the notices of termination were served. It was similar to the December 17, 2022, incident where the Tenant's occupant or herself were filming the Landlord while he was in the rental unit.
23. It is clear that there is some animosity between the Landlord and the Tenant. Based on the past behaviour of the Tenant's occupant.
24. In a general sense, filming someone is not illegal as long as you are filming in a location that is open to public view and the person does not have a reasonable expectation to privacy. Given the circumstances of this case- I do not find that the filming of the Landlord's staff or them amounts to substantial interference.
25. Although, I do not find that the filming in this case rises to the level of substantial interference- I will note that the Tenant has been notified that this behaviour is most unwelcomed by the Landlord and continuing to film the Landlord while on the property of the residential complex may not be the best course of behaviour to foster an amicable relationship with the Landlord. So, I would caution the Tenant on this behaviour in the future. If in the future, the Landlord feels that there are new instances that rise to the level of substantial interference, they would be free to file a new application with the Board.
26. The Tenant has lived in the rental unit for approximately 12 years. She lives in the rental unit with her common-law partner. Her rental unit is situated close to her work and has community ties to the neighbourhood.
27. For the above-mentioned reasons and the length of the tenancy, the tenancy will continue subject to the conditions set out below.

**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, their guest or occupant, shall ensure that their verbal or written communication to the Landlord, their agents, and/or other Tenants is cordial and nonaggressive in nature. This includes using profanities.
3. The Tenant shall ensure that the utility bills are paid in full and on time pursuant to the lease agreement.
4. If the Tenant fails to comply with the conditions set out in paragraph 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 May 16, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 17, 2023 at 6.00% annually on the balance outstanding.

**May 5, 2023**

**Date Issued**

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Curtis Begg

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.