



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

**Citation:** 1232119 Ontario Inc. v Hayes, 2023 ONLTB 34485

**Date:** 2023-05-03

**File Number:** LTB-L-018455-23

**In the matter of:** Basement Unit, 320 VICTORIA ST S KITCHENER  
ON N2M3A3

**Between:** 1232119 Ontario Inc. Landlord

**And**

Devin Hayes Tenant

1232119 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Devin Hayes (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 Application).

1232119 Ontario Inc. (the 'Landlord') also applied for an order to terminate the tenancy and evict Devin Hayes (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 Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex; the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex; and the Tenant has been persistently late in paying the Tenant's rent (L2 Application).

This application was heard by videoconference on April 24, 2023.

Only the Landlord's Agent Nusrat Govindji and the Landlord's Legal Representative Erli Bregu attended the hearing.

As of 9:54 a.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. Since the Tenant did not attend and the Landlord was prepared to proceed, the matter proceeded by way of an uncontested hearing pursuant to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990.

**Determinations:**

L1 Application

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,295.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$42.58. This amount is calculated as follows: \$1,295.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to April 30, 2023 are \$5,975.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,295.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$16.82 is owing to the Tenant for the period from April 2, 2022 to April 24, 2023.

L2 Application

10. This L2 application is based on a number of Notices of Termination the Landlord served on the Tenant. In particular, the Landlord served an N8 Notice, an N5 Notice, an N6 Notice and an N7 Notice.
11. At the hearing, the Landlord no longer wished to proceed on the N8 Notice of Termination. As a result, this Notice was not considered.
12. The remaining Notices of Termination all relate to allegations surrounding the Tenant's dog.

N6 Notice of Termination-Illegal Act

13. On February 27, 2023, the Landlord served the Tenant an N6 Notice of Termination. The termination date on the N6 Notice is March 20, 2023. The Notice contains the following allegations:

On January 30, 2023, you were charged with the offence “As owner, did permit dog to attack, bite, or cause injury to a person” which is against Kitchener by-law 2014138 section 34 for allowing your dog to bite the upstairs tenant on January 23, 2023.

14. Section 61(1) of the Residential Tenancies Act, 2006 (the Act) reads as follows:

A landlord may give a tenant notice of termination of the tenancy if the tenant or another occupant of the rental unit commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex.

15. Aly Govindji testified the residential complex is a two-unit dwelling. There is an upstairs unit where he resides and a downstairs unit where the Tenant lives. There is a common laundry room that requires entry from the shared driveway.

16. Mr. Govindji testified that on January 24, 2023, he went to use the common laundry area. He opened the door to the laundry room and the Tenant’s dog was inside. The dog started growling at him and then bit his arm. Mr. Govindji testified he moved back and into the driveway as the Tenant’s dog continued after him.

17. Mr. Govindji’s evidence was the dog attacked him and forced him up against a vehicle in the driveway as the dog bit him on his side. He was screaming for help while he struggled with the dog. The dog then bit his knee and Mr. Govindji fell to the ground. At this point the dog was over top of him and “trying for my face”. Mr Govindji testified he managed to prevent this by grabbing hold of the dog’s neck.

18. Mr. Govindji testified the Tenant arrived and pulled the dog off of him. Mr. Govindji then attended the hospital for treatment of his injuries.

19. The Landlord submitted a number of photographs into evidence showing the injuries Mr. Govindji received as a result of the attack from the Tenant’s dog. They show injuries to Mr. Govinji’s hand, arm, knee and stomach.

20. Sarah Canavan testified that she is an Animal Protection Officer for the City of KitchenerWaterloo and North Waterloo Humane Society. She received a call on January 24, 2023 regarding a dog bite at the residential complex and investigated the incident. After her investigation she concluded the Tenant’s dog had attacked Mr. Govindji. She designated the dog as dangerous and required the Tenant to remove the dog from the

rental unit. The Tenant is also required to muzzle and leash the dog when it is outside of the rental unit.

21. Ms. Canavan testified the Tenant had five days to appeal this designation and did not do so.
22. On January 30, 2023, once the Tenant's five days to appeal the designation had expired, Ms. Canavan charged the Tenant with the offence of "As Owner, did permit dog to attack, bite or cause injury to a person" contrary to *Kitchener By-Law 2014-138*, section 34. The offence notice was served on the Tenant on January 30, 2023.
23. Based on the uncontested evidence presented by the Landlord, I am satisfied the Landlord has proven on a balance of probabilities the Tenant committed an illegal act by failing to exercise control over his dog. As a result, he permitted his dog to attack, bite or cause injury to Mr. Govindji. I am further satisfied this illegal act was committed by the Tenant at the residential complex and it was not trivial.
24. I have also considered *Swansea Village Co-Operative v. Balcerzak, 1988 CanLII 4844 (Ont. Div.Ct.)* and in doing so am satisfied the illegal act committed by the Tenant at the residential complex has affected the character of the premises and disturbed the reasonable enjoyment of the other tenant. Clearly, Mr. Govindji should not be subjected to attacks from the Tenant's dog.

#### N7 Notice-Serious Impairment of Safety

25. On February 28, 2023, the Landlord served the Tenant with an N7 Notice of Termination. The Termination date on the Notice is March 20, 2023. The Notice provides a chronology of the events already discussed in this order and alleges that:
  - a) As of February 19, 2023, the Tenant continues to leave his dog unattended, unleashed and unmuzzled. The Notice alleges this constantly puts the residents at the residential complex at risk of further attacks. The Notice also alleges the neighbour to the residential complex complained to the Landlord as the Tenant's dog was in their backyard roaming without a leash dog or collar.
  - b) As of February 27, 2023, the Tenant has not removed his aggressive dog from the rental property in accordance with the designation from the Humane Society and is therefore seriously impairing the safety of the other tenants at the residential complex.
26. Mr. Govindji testified that on February 19, 2023, the Tenant's dog was running loose in the common backyard at the residential complex. The dog was unleashed and unmuzzled. Mr.

Govindji testified the Tenant continues to keep his dog at the residential complex. According to Mr. Govindji, the Tenant has taken no steps to control his dog and has not communicated any plans to him that would prevent another attack.

27. I am satisfied the Landlord has proven on a balance of probabilities the Tenant is seriously impairing the safety of Mr. Govindji. As of the date of the hearing, the Tenant's dog remains at the residential complex. The dog has been designated as dangerous and the Tenant was required to remove the dog from the property and has failed to do so. The Tenant also fails to leash and muzzle the dog as required. It is clear the ongoing presence of the Tenant's dog at the residential complex is a significant safety issue for Mr. Govindji.
28. I have considered section 76(1)(a) of the Act and am satisfied the past behaviour of the Tenant's dog that occurred on January 24, 2023 has substantially interfered with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or other tenants.
29. Since I am satisfied the Landlord has proven the allegations on the N6 Notice and the N7 Notices of Termination, I find it unnecessary to make findings on the remaining N5 Notice.

#### Section 83 Considerations

30. The Landlord sought an expedited eviction. Mr. Govindji testified the Tenant has not complied with the designation issued by Ms. Canavan. His evidence was the Tenant allows his dog to run loose in the backyard common area without a leash or muzzle. He testified he has yet to retrieve his laundry from the common laundry area for fear of another attack since the Tenant has not complied with the requirements of his dog having been designated as dangerous.
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. I asked the Landlord if they were aware of any circumstances the Tenant may be experiencing that would make eviction unfair and they were aware of none. The Tenant did not attend the hearing to make submissions or give evidence in support of delaying or denying eviction.

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

1. Pursuant to the L2 Application, the tenancy between the Landlord and the Tenant is terminated effective May 11, 2023. The Tenant must move out of the rental unit on or before May 11, 2023.
2. The Tenant shall pay to the Landlord \$4,576.10 for arrears of rent owing up to the date of the hearing and \$186.00 in costs to file the application. The amount of the rent deposit and

interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.

3. The Tenant shall also pay the Landlord daily rent/compensation of \$42.58 per day for the use of the unit starting April 25, 2023 to the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before May 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 12, 2023 at 6.00% annually on the balance outstanding.
5. If the unit is not vacated on or before May 11, 2023, then starting May 12, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 May 12, 2023. The Sherriff is requested to expedite the enforcement of this order.

**May 3, 2023**

**Date Issued**

\_\_\_\_\_  
John Cashmore

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 expires on November 12, 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.

**Schedule 1  
SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay as the tenancy is terminated**

Rent Owing To Hearing Date	\$5,701.92
Application Filing Fee	\$186.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,295.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$16.82
<b>Total amount owing to the Landlord</b>	<b>\$4,576.10</b>
Plus daily compensation owing for each day of occupation starting April 25, 2023	\$42.58 (per day)

2023 ONLTB 34485 (CanLII)